

Seattle Waterfront LID Assessment Hearing

Seattle LID Public Comment Hearing

March 3, 2020



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

206.287.9066

www.buellrealtime.com

Olympia | **360.534.9066** Spokane | **509.624.3261** National | **800.846.6989**

email: info@buellrealtime.com



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEATTLE WATERFRONT LID ASSESSMENT HEARING
BEFORE
HEARING EXAMINER RYAN VANCIL

Taken at 700 Fifth Avenue
Seattle, Washington

DATE TAKEN: MARCH 3, 2020
REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

HEARING EXAMINER: RYAN VANCIL

FOR THE CITY: MARK S. FILIPINI
GABRIELLE E. THOMPSON
K&L GATES
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
206.370.8097
mark.filipini@klgates.com
gabrielle.thompson@klgates.com

FOR OBJECTORS: R. GERARD LUTZ
JACOB STILLWELL
PERKINS COIE, LLP
10885 N.E. Fourth Street
Suite 700
Bellevue, Washington 98004
425.635.1400
Jlutz@perkinscoie.com
Jstillwell@perkinscoie.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

MARCH 3, 2020

Witnesses:	Page
ANTHONY GIBBONS	
Direct by Mr. Lutz	47
Cross by Mr. Filipini	111
Redirect by Mr. Lutz	179
RANDALL SCOTT	
Direct by Mr. Stillwell	187
Cross by Ms. Thompson	207
Redirect by Mr. Stillwell	230

EXHIBIT INDEX

No.	Description	Marked
8	Seattle Waterfront Program Diagram, June 2019	64
9	LID before and after images	65

1 SEATTLE, WASHINGTON; MARCH 3, 2020

2 9:04 a.m.

3 -o0o-

4 HEARING EXAMINER VANCIL: Good morning.

5 I'll call to order this March 3rd, 2020,

6 continuance of the Seattle Waterfront LID Assessment
7 hearing.

8 Today, objections will continue to be heard
9 from Hearing Examiner case numbers, and there's a long
10 series and I'll read them into record today, and then
11 we'll list the other dates that these items will appear
12 and will not list them all again.

13 So we're starting with 233, 409, 410, 411,
14 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422,
15 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433,
16 434, 435, 436, 437, 438, 439, 440, and 441, and, lastly,
17 318.

18 Those case numbers are all consolidated into
19 a period which will be heard today, March 5th, 11th and
20 12th, and April 2nd, 8 and 9, which is a part day, and
21 April 13 and 14.

22 For today, we will take a break at
23 approximately 10:00 a.m., lunch at noon, and another
24 break approximately around 3:00 p.m., depending on where
25 we are with witnesses.

1 Please make sure all cell phones are turned
2 off. And also make sure -- we have a new recording
3 system and so we're not quite sure how much it picks up.
4 We've heard it's very good.

5 So my caution to counsel and others is that
6 you keep your conversations outside the room instead of
7 between each other here, because they've referred that
8 it's actually quite that good that it would pick you up.

9 Also make sure you keep your sounds to a
10 minimum, both for the recording purposes and for the
11 transcriptionist so that she can do her job without
12 being interrupted.

13 Let's see. So who do we have here today for
14 appellants?

15 MR. LUTZ: Jerry Lutz, and shortly, Jake
16 Stillwell.

17 HEARING EXAMINER VANCIL: Okay. And City,
18 present?

19 MR. FILIPINI: Mark Filipini.

20 MS. THOMPSON: Gabrielle Thompson.

21 HEARING EXAMINER VANCIL: All right. Let's
22 see. First, I have a couple of items that we're going
23 to address before we get started.

24 One is, I want to check with the City, I
25 need to issue a scheduling order just so that other

1 parties and objectors know what's going on in the
2 hearing room. We have some dates set that I've added
3 for these case numbers I've just listed; those will be
4 included. Dates are also set for the City to provide
5 their argument and for cross-examination.

6 In looking at those, I was realizing we'd
7 set aside two dates for City argument, response, and
8 also a couple of days for cross-examination for the
9 City's primary witness, their appraiser. And that time
10 seems warranted, but the question I had is for the City,
11 how many other witnesses -- witnesses do you anticipate
12 calling? And if there's cross-examination for those
13 witnesses beyond, I believe it's Robert Macaulay, do you
14 anticipate that that's going to be within your two days,
15 or do we need more time to make sure there's
16 cross-examination for your other witnesses?

17 MR. FILIPINI: So, as of right now, we're
18 planning to call, for sure, two other witnesses. So
19 Mr. Macaulay plus two other witnesses, and then
20 potentially one on top of that. So three or four.

21 And I -- I was thinking that two days would
22 be enough for cross-examination of all of our witnesses,
23 but we wouldn't be opposed to adding an additional day.
24 Certainly, we're planning to get their case in chief
25 done in total in two days.

1 HEARING EXAMINER VANCIL: Okay. What I'm
2 going to do, then, is right now we have April 27, 28 for
3 the City's case in chief. Cross-examine will be set
4 aside for April 29 and 30.

5 I will set aside on our calendar another
6 half day on Monday, May 4th. This is not a scheduled
7 time, it just allows me to have a calendar hold --
8 placeholder in case we have some -- and that'll be
9 determined, as needed, at the end of the time period
10 I've just described to see if we need more time to make
11 sure the City's had an opportunity to put on its case.

12 And for that -- let me be clear, that that's
13 for that purpose only. I will not extend
14 cross-examination time into Monday, unless it's because
15 the City said, look, we got to the end of our two days,
16 it's not going to work, they bump into the two days set
17 aside for cross-examination and cross-examination's
18 lost. I'm setting aside two days for cross-examination,
19 which is ample. And so we will not extend that May 4th
20 time simply for the sake of continuing it for two and a
21 half days of cross-examination of one witness.

22 So that helps me with my scheduling. Thank
23 you.

24 I'll get that order out probably tomorrow.

25 Now, I also -- from the objectors for today

1 we have a motion to compel discovery and, specifically,
2 depositions. And there was a request for oral argument
3 in addition to written motions that I've received both
4 from the objectors and a response from the City.

5 I'm happy to hear a bit more, but there's
6 really no reason to repeat everything that's in the
7 briefing. If we want to do oral argument, we can
8 proceed with that.

9 MR. LUTZ: Thank you, Mr. Examiner.

10 I think your scheduling order and
11 anticipating that the two days of cross-examination for
12 the City's now four to five witnesses is another data
13 point to show why the depositions would be helpful, as
14 opposed to just trying to do cross-examination of
15 everybody in those two days.

16 We had Mr. Macaulay's deposition last week,
17 and on the two issues we raised, both the City's -- the
18 status of the City's plan and cost estimates and the
19 likelihood, and likely schedule, for actual construction
20 of the LID improvements, Mr. Macaulay said that he made
21 no independent investigation and is relying entirely on
22 the information that he has received from the City.

23 So he has made both extraordinary
24 assumptions and hypothetical postulations in his
25 appraisal as to what is ultimately going to be billed,

1 when it is going to be billed, and how likely it is to
2 change.

3 We would like the opportunity to question
4 the witness designated by the City as most appropriate
5 to describe the status of the City's plans, the status
6 of the City's cost estimates, and the environmental and
7 land use process that remains to be completed before
8 these improvements can be constructed.

9 In that regard, it's -- it's helpful to
10 think about the very first hypothetical that
11 Mr. Macaulay has incorporated into his analysis. And
12 that is that both his before and his after values for
13 purposes of calculating the special assessment are based
14 on his hypothetical that the improvements were completed
15 as shown in the City's design, some of which are
16 early -- very early stage, by October 19th, 2000 -- or
17 October 1, 2019.

18 We know that they won't be completed under
19 the City's schedule until 2024. We know that, as an
20 example, Pier 58, which is sort of the most park-like of
21 the supposed city park improvements, has not yet started
22 SEPA review. It requires SEPA review. It requires
23 federal permits.

24 So, at least to me, it's intuitive; it
25 requires NEPA review. It's over water. It's got four

1 permits. It's got marine mammal permits. I assume it's
2 got an ESA consultation, unless that's been signed off
3 on. I assume it has Tribal Consultation. That's all
4 supposed to occur, and construction is supposed to
5 occur, by 2024.

6 And there's -- and it is at least an
7 extraordinary assumption by the appraiser that all that
8 actually gets done as the City has described it under
9 their current plans, and that he uses a legal fiction to
10 back that up to 2019.

11 But we would like to be able to test those
12 two basic sets of facts in a deposition, without wasting
13 a bunch of time to try and do it at the hearing, so that
14 we can have a -- a fuller understanding of where the
15 City is on this, whether we're right about what we
16 consider to be a fairly daunting gauntlet to -- of
17 entitlement work to get done within that period, and --
18 and do it in a way that we can educate our case in chief
19 and also streamline our cross-examination.

20 So I'm open to any questions you have.

21 HEARING EXAMINER VANCIL: No. I'll hear
22 from the City. Is that everything you had to say on the
23 motion?

24 MR. LUTZ: Yes.

25 MR. FILIPINI: We'll stand on the arguments

1 we made. I'll just address the deposition last week.
2 We think that Mr. Macaulay's deposition, you know,
3 proves why further discovery isn't necessary here. A
4 little unextraordinary discovery of lay witnesses in an
5 LID proceeding.

6 He is very open that he made assumptions in
7 his study. It -- just as his study says that the
8 projects would be built to the minimum design stated by
9 the City. Therefore, the arguments that objectors are
10 making are really legal arguments that, frankly, go to
11 formation, not the assessments. But they're already in
12 possession of any information they would need to make
13 those arguments. But getting a deposition to show that
14 project X might be at 30 percent versus 40 percent, not
15 only is publically available and has been provided,
16 updates have been provided, via the formation
17 litigation, which we have no objection to, objectors
18 are -- are clearly accessing that. They support their
19 motion with it.

20 Some of the exhibits in this hearing have
21 come from our discovery responses in the formation
22 litigation. We're fine with that. But in our view, no
23 additional discovery is needed to make those legal
24 arguments. Particularly, where we're going to have
25 somebody available to be cross-examined at the hearing

1 on this topic of objector issues.

2 HEARING EXAMINER VANCIL: Thank you. Having
3 read both of the motion and the response materials,
4 the -- and hearing oral argument, I'll deny the motion
5 for additional depositions.

6 The -- there was a request, at the outset of
7 the hearing on February 4th, to depose a witness --
8 there was an opportunity to ask at that time for
9 depositions to be made. That opportunity was there and
10 provided after the door had already closed, really.
11 That was the start of the hearing. We're well into the
12 hearing now, a month into it. There was an opportunity
13 created and an extraordinary effort to provide for
14 depositions. The hearing examiner asked the City to, in
15 good faith, work with the objectors to provide that;
16 they have done that.

17 The opportunity is there and has been taken
18 advantage of. It's clearly informed, to some degree,
19 the arguments that will be presented by objectors.
20 There's going to be ample time for cross-examination,
21 during the City's case in chief, of these other
22 witnesses. The hearing examiner has also identified
23 additional time, if cross-examination carries over, so
24 that that can be addressed.

25 All of this deposition where the -- and

1 discovery, frankly, should have happened before
2 February 4th. And so the efforts that have been engaged
3 in so far have been above and beyond to try to
4 accommodate the objectors after-the-fact requests. And
5 so, at some point, there really has to be a cutoff,
6 saying, look, we're -- we're moving along and, while we
7 understand that you want to get more information, you're
8 starting your hearing today. We need to get on with the
9 presentation of the hearing and not continue the
10 discovery process after the fact.

11 And so I won't -- I will not compel any
12 further discovery.

13 Given that, let's proceed with objector's
14 case.

15 MR. LUTZ: My outline and my argument.

16 HEARING EXAMINER VANCIL: And by the way, my
17 ruling in no way addresses the merits of the arguments.

18 This is purely a question of depositions of lay
19 witnesses should be allowed --

20 MR. LUTZ: One PowerPoint plus the.

21 THE COURT: -- in the hearing.

22 MR. LUTZ: That's the two pictures and --
23 and the exhibits. The exhibit witness list.

24 Just a moment for getting our paperwork
25 organized.

1 First, Mr. Edlund-Cho had asked last night
2 for a witness and exhibit list to help him follow along,
3 and so we've prepared one.

4 Mr. Examiner, do you want one as well?

5 HEARING EXAMINER VANCIL: Whatever he gets,
6 I get. So just one is fine.

7 MR. LUTZ: Oh, just one. Okay.

8 HEARING EXAMINER VANCIL: Before you get
9 that. Just one -- maybe you're going to address this,
10 but one thing I would ask is, at the outset of these
11 multi days that we have set aside for -- I didn't count
12 how many case numbers that we're addressing -- it would
13 be helpful for the record and the examiner to know, as
14 witnesses or exhibits are being introduced or segments
15 of argument are being approached, which case numbers
16 you're attempting to address.

17 It's my understanding that you will likely
18 have overlap witnesses. So it's maybe a single expert
19 will speak to all of the cases. They may, as I
20 understand it from counsel in other cases, that there
21 may be witnesses testifying to those cases as well.

22 So at the outset, before a witness is
23 testifying, if they could maybe identify what they're
24 addressing; which case numbers. I'm sure that we'll
25 hear about specific properties, as well. So for the

1 purpose of the record being clear, which case numbers
2 we're addressing would be useful.

3 MR. LUTZ: Thank you. Can I set up that
4 hearing brief?

5 MR. STILLWELL: Yes.

6 MR. LUTZ: Recognizing that you haven't had
7 a chance to read this, I'd like to submit an opening
8 brief. This is partly based on my understanding that --
9 from another case, that you have chosen not to have
10 closing briefs.

11 HEARING EXAMINER VANCIL: Closings are
12 welcome, but it has to be done within the time that
13 you've got, as opposed to leaving records open for more
14 documents to be submitted.

15 I will clarify one thing, I didn't -- one
16 additional opportunity that objectors will have -- and
17 this will be in my scheduling order, which will include
18 discussion about cross-examination -- is that, on
19 completion of cross-examination of the City's witness,
20 the record will be left open for a week for objectors
21 who have cross-examined that witness to provide closing
22 to direct -- closing argument at that, that derives from
23 that cross-examination, not for their whole case, but
24 anything that comes up at that. Because I recognize
25 that, well, if they cross-examine and then the door is

1 closed, there's no comment after that.

2 So there will be an opportunity to comment
3 and direct argument that comes as a result of that
4 cross-examination for one week after the close of the
5 hearing. The City will then be afforded a week to
6 respond to those comments. And then the record will
7 close.

8 MR. LUTZ: All right. Thank you. That's
9 helpful. Let me see.

10 And can I have my power point?

11 MR. STILLWELL: Yeah.

12 MR. LUTZ: So one addition to your question
13 about identifying which matter is going to be at issue
14 with any particular witness.

15 So, first of all, I'd like to hand just two
16 pages, which identify, for Mr. Gibbons' testimony, the
17 matters that are going to be at issue and the records to
18 which Mr. Gibbons' testimony is anticipated to apply.

19 He's testifying for all of our -- for all of
20 our assessment appeal challenges, later in the day.
21 Where did I put my -- my witness and exhibit list?

22 We've identified -- we're hoping to get
23 through four witnesses today. And the other three
24 are -- where did they go?

25 Yeah, Randall Scott, who is testifying for

1 certain of the appellants and will identify for whom
2 he's testifying at the outset of his testimony.

3 Ben Scott, who's appearing telephonically or
4 via Skype, who will be testifying for the -- that same
5 suite of appellants, and also Mr. Scott is testifying
6 specifically for Fourth Avenue associates, which we will
7 identify their -- their parcel number.

8 And Mr. Carpenter would be testifying only
9 for Fourth Avenue Associates. He's the owner.

10 And -- and what we're trying to do is, both
11 take advantage of one testimony opportunity for people
12 like Mr. Gibbons, who are testifying on behalf of all of
13 our appellants, but, at the same time, efficiently use
14 the full day without gaps. So that if we can knock off
15 individual appeal segments in what we think are going to
16 be interstitial spaces, we can get that accomplished
17 in -- with the least disruption and least waste of time.

18 But it does mean we're going to go from a witness who
19 has multiple case testimony to witnesses who have
20 individual case testimony. And Mr. Scott's at least is
21 both. And there are Kidder Mathews witnesses,
22 Mr. Shorett and Mr. Gordon, who also have a subset of
23 our appellants, but will be providing testimony as to
24 both that suite of appellants in one setting and
25 individual assessments in a second setting.

1 I hope that is helpful.

2 HEARING EXAMINER VANCIL: You've given me an
3 overview of how you chose to approach. We'll need to
4 break down, as we get to each of those, which cases
5 you're talking about.

6 MR. LUTZ: All right. Thank you.

7 Absolutely. So let me get my glasses.

8 We appreciate the opportunity to provide an
9 overview of the appeals that Mr. Gibbons is going to
10 testify to next. We have 29 appeal petitions for 31
11 parcels. There are actually fewer owners than that
12 because some of the owners have a multiple-parcel
13 development.

14 So, for example, the Harbor Steps Apartments
15 is four assessed parcels. So it's kind of a question of
16 how you count, but we have 29 appeal petitions for 31
17 parcels. This is -- we are representing about four and
18 a half billion dollars worth of assessed value real
19 estate in Downtown Seattle.

20 If you flip to the second page, there are --
21 we've identified the locations of the different projects
22 and their owners. The -- the appellants are seven
23 hotels, ten apartment complexes, four office retail
24 buildings, two individual condo units, and one vacant
25 lot.

1 We believe that on a number of grounds the
2 current final benefit study is fundamentally flawed.
3 And the assessment should not be finalized until
4 additional environmental and entitlement work is done,
5 additional design and cost work is done, and there's
6 more certainty in the -- in the valuations before and
7 the still-hypothetical after.

8 The law is -- and I realize you don't rule
9 on constitutional issues, but a special benefit study
10 assessment against property that is based on
11 fundamentally flawed methods, overstated or
12 disproportionate, constitutes a deprivation of property
13 without due process of law. That's a -- a fundamental
14 principle of Washington law.

15 The proposed assessments in Mr. Macaulay's
16 studies are presumed correct unless overcome by clear,
17 cogent, and convincing evidence. This standard is less
18 deferential than the heightened presumption of
19 correctness that's carried by the fundamentally wrong
20 basis and arbitrary capricious standard that would apply
21 if this matter goes into a judicial appeal, because
22 applying the elevated standards at the municipal hearing
23 would afford unwarranted deference to a report prepared
24 under contract by a private appraisal firm.

25 That is the -- I don't know how you say

1 it -- Hasit case, 179 Wn.App. 917 at 949.

2 This special assessment is, by the City's
3 appraiser's admission, unusual.

4 Special assessments are typically used to
5 pay for local improvements, and that concept goes back a
6 long time. It's been -- it's sort of the original
7 public-private partnership, where, if people want to
8 extend city development to a certain area and they can't
9 pay for it themselves, they can't pay for the road and
10 the infrastructure, and the city leaders want to support
11 that, you have a method to form an LID. The City issues
12 bonds. The cost of the bonds pays for the improvements,
13 and the bonds are repaid through the money collected
14 through the LID assessment. That's -- that's what the
15 traditional LID concept is based on.

16 They've been used for all sorts of things;
17 construction of streets, gutters, curbs, sidewalks,
18 sewers, drains, ditches, street lighting, water mains.
19 They've been used, sometimes, for parks.

20 But the standard that's applied is one
21 common element. If they are used for construction of
22 local improvements -- well, they are used for
23 construction of local improvements that are appurtenant
24 to specific land and bring a benefit substantially more
25 intense than is yielded to the rest of the municipality.

1 The benefit to the land must be actual
2 physical material and not merely speculative or
3 conjectural. That's the Heavens case, 66 Wn.2d 558 at
4 563.

5 So the City's job in forming an LID is to
6 distribute and -- and assess cost and expense of
7 improvements in accordance with the special benefit
8 incurred -- conferred in each property within the LID.

9 Questions are: Is it appurtenant to
10 specific land?

11 It cannot exceed the actual benefit enjoyed
12 by that parcel. Must be proportionate relative to other
13 parcels. The benefit must be -- the special benefit
14 must be actual, physical, and material, and the special
15 benefit cannot be speculative.

16 So this leads to the question: Was the
17 City's method of assessing the properties properly
18 supported by project design specifications, market data,
19 empirical research, and based on a -- an actual before
20 and a reasonably probable after?

21 The answer to that is no.

22 The second question: Do the proposed
23 assessments actually -- accurately reflect an actual
24 special benefit conferred on specific properties as a
25 result of the LID improvements?

1 Again, the answer is no.

2 The City has used what we believe to be
3 flawed methodology. An example where an LID was
4 overturned for flawed methodology was the Bellevue Plaza
5 v. City of Bellevue, 121 Wn.2d 397.

6 There were two flaws in that that the --
7 that the Court found in that assessment. The first was
8 that they were relying, basically, on traffic counts to
9 justify charging for road improvements. Not -- not an
10 un -- an illogical basis, but it was not deemed proper
11 because it was supposed to be market value.

12 And they used a formula, one third of the
13 cost of the trips generated by existing uses and two
14 thirds to the trips -- allocated to the trips estimated
15 to be generated by future uses.

16 And then followed with the comment, The City
17 offered little justification for the one-third --
18 two-thirds calculation, which I believe will be similar
19 to the lack of justification for the City's appraisers'
20 various estimations.

21 And to begin with, as I mentioned in -- in
22 our argument about discovery, here, both the before and
23 the estimated increases in property values anticipated
24 from the City's LID improvements are based on
25 hypothetical cases.

1 It starts with the hypothetical that the
2 viaduct was down and all of the WSDOT improvements are
3 in place as of October 2019, as the assumed before
4 value. So there's a hypothetical before that assumes
5 facts that are just flat not correct. It's a
6 hypothetical.

7 And then the after is based on a second
8 hypothetical that all of the City's anticipated LID
9 improvements are built and in place by October 2000 --
10 or October 1, 2019, which is five years before they're
11 anticipated to be complete, by the City's schedule.

12 That goes on, then, to translate into, for
13 the before, a value increase that Mr. Macaulay has
14 purported to estimate as to all 6,000 properties in
15 the -- in the LID area.

16 Because of the -- the removal of the viaduct
17 and what WSDOT would be building but for the City; and
18 then a second calculation of what the value of those
19 properties is estimated to be, on the hypothesis that
20 they've been -- that the City's LID improvements have
21 been completed as of October 1, 2019. Again, five years
22 before they're delivered.

23 There is nothing actual about any of that.
24 There is nothing physical about any of that. It is --
25 it is a prognostication that the appraiser is making,

1 based entirely on -- on preliminary plans and schedules
2 that he's been given by the City, with no independent
3 investigation.

4 So how that translates is, for the condo
5 owners, they are anticipated to have an improvement that
6 won't exist for at least five years. Their market value
7 goes up now, according to the City, but doesn't really,
8 and they start paying tax.

9 For the hotels, there's a soon-to-be -- an
10 increase in tourism that, as of right now, has increased
11 their room rates and occupancies. So they're --
12 according to the way that the LID is formulated, they
13 are already making -- as of last year, they're already
14 making a lot more money from which they are going to
15 fund this very generous small LID improvement. When in
16 fact, they're not making any money because nobody's
17 going to pay now to stay in a hotel because the
18 improvements might be here in five years. The same
19 applies to retail and commercial. It is an entirely
20 hypothetical construct.

21 You have the second -- the second
22 formulation that Mr. Macaulay is using is proximity to
23 park improvements that are adding connectivity,
24 locational value enhancement, and market appeal.
25 Because of aesthetics, views, and other issues.

1 And in that regard, he is estimating, but
2 really with no data. These are -- it is almost entirely
3 professional judgment. In fact, I -- in our deposition,
4 I was unable to figure out what part wasn't professional
5 judgment.

6 But how you make an analysis of what the
7 value in this assumed before is versus actual market
8 conditions, and how you distinguish between that
9 hypothetical before and the value that is presumed added
10 after the viaduct is gone by replacing standard street
11 improvements with a nicer sidewalk, more trees, less
12 parking, and -- and a nice over-water park, a bridge up
13 to the market, and some road and bike path improvements
14 that go up to the freeway, along Pike/Pine and out to
15 Pioneer Square.

16 So again, both the before and after
17 scenarios are based on hypotheticals. It's -- it is
18 anticipated that the before is actually WSDOT's plan at
19 completion as of October 1, '19 versus the City's plan
20 at completion as of October 1, 2019.

21 It goes without saying that a lot can change
22 in five years. So the estimated value lift, if we were
23 using a 2024 date, would be difficult to project because
24 the economy may turn south. It may get much better.
25 But it is a hypothetical to assume that it has already

1 occurred when we know it has not.

2 Moreover, with this delay, there's no
3 consideration of the risk that property owners will be
4 charged for benefits that never materialize or may be
5 significantly delayed, or for improvements that may
6 significantly change during the entitlement process in
7 ways that reduce the anticipated special benefit.

8 And -- and, again, no consideration was
9 given either of discounting the present value of the
10 future improvements for -- for realizing them five years
11 or later from now, nor for the risk that they might not
12 be delivered or benefits enjoyed for years, if ever.

13 So the -- the hypothetical is they've
14 already been delivered. There will be no benefit in an
15 actual way until they are delivered. And there was no
16 consideration of the -- essentially, the time value of
17 money for that five-year, or more, delay, and no
18 consideration of the risk that the market may change in
19 that five years, and no consideration of the risk that,
20 what is ultimately delivered, may be different than what
21 is being incorporated into the analysis.

22 So again, it's not -- it is not actual,
23 physical, and material. It is speculative. It's not
24 clear to us how the offices would benefit from increased
25 tourism, as an example, when the improvements are

1 complete.

2 For the hotels, there's no mark
3 segmentation, no analysis of whether new visitors are
4 coming for business, for other reasons, as opposed to
5 filling rooms because of tourism. No explanation of why
6 the increased tourism would lead to increased rates for
7 conference rooms, parkings, or food. And -- and, again,
8 no benefits to the hotels until the actual improvements
9 exist.

10 So the assumption that they're making more
11 money now, when the improvements are coming five or more
12 years from now, is just -- is -- is a hypothetical that
13 is contrary to fact.

14 It's -- you know, residential condos and
15 apartments. I'm not sure how they benefit from
16 increased tourism, unless they're Airbnb. And in the
17 meantime, rather than the assumed hypothetical that they
18 are -- they are now enjoying the benefits of the LID
19 improvements, what they're going to experience is
20 another four to five years of construction.

21 And then also something that hasn't been
22 analyzed is decreased parking, which will take cars off
23 of the promenade and waterfront, but it's not clear
24 exactly where they're going to go.

25 And there's -- there's another assumption,

1 and this is in Mr. Macaulay's report, that because the
2 property is now going to be zoned as a park, that is
3 going to give the City enhanced authority to regulate
4 behaviors in the -- in the park areas, provide security,
5 provide additional cleanliness. And it's not clear to
6 me what that additional authority is and -- and what
7 it's even compared to. Because it might be compared to
8 as -- as though it were a WSDOT throughway, as opposed
9 to a City park. But it's not clear that that's an
10 actual deliverable either.

11 Another flawed methodology -- and it -- it's
12 in his -- in Mr. Macaulay's special benefits study of
13 page 83. He's quoting an academic, Dr. John Crompton,
14 who's done a bunch of studies which are cited in the ABS
15 final valuation study about how to value the economic
16 benefit to surrounding properties that might be
17 associated with the construction of a park. He's
18 basically a professor that can tell you what type of
19 study to do, and -- and what type of tax revenue the
20 City can anticipate if it builds a park like that.

21 And just quoting from Mr. Macaulay's study
22 at 83, in terms of direct impact, "John Crompton's
23 ongoing studies into impact on park on property values
24 have been used by municipalities across the country,
25 Crompton's Proximate Principle represents a

1 capitalization of park land into increased property
2 values and a widening of the tax base. One major
3 finding based on his results deals with the location and
4 proximity of property to the park improvements, both in
5 urban and suburban environments, 75 percent of the
6 benefit from a park is captured within 500 feet or three
7 city blocks. The remaining 25 percent of the benefit is
8 likely dissipated over a 500- to 2,000-foot range, or 4
9 to 12 city blocks."

10 The issue that comes up in using that
11 standard in Mr. Macaulay's study is he used the block
12 distance, three blocks, 12 blocks, but since Seattle
13 city blocks are big, 300 feet, it's basically double the
14 area that you would calculate on that assumption.

15 And -- and Mr. Macaulay, in his deposition,
16 said that some of his assessments were a mile and a half
17 from the waterfront. So if -- which is a lot more than
18 2,000 feet.

19 So again, this is just -- he's misapplied
20 the background data that he purports to use to justify
21 the assessments.

22 Another issue is back to this confounding
23 factor. He has purported to tease out and exclude the
24 value of removal of the viaduct and views in general
25 from the special benefit assessment that will apply for

1 the enhanced pedestrian-friendly connectivity, promenade
2 and park-ish improvements the City is proposing. The --
3 the view itself is the big component here.

4 When the viaduct is removed, some properties
5 get a very significant improvement in view. The ones
6 that are currently blocked -- well, or now the viaduct
7 is gone so now they can actually see the water. Others
8 don't.

9 And one of the issues is that we believe
10 there is no data to support -- there are no data to
11 support Mr. Macaulay's conclusions, that he has excluded
12 from his assessments the value lift associated with view
13 in general or removal of the viaduct in particular.

14 And the way that's relevant to an LID
15 assessment is you -- the City cannot assess property
16 owners for components of value that they already have.

17 So for example, I had a case with a school
18 district. And it turned out I had a case on all fours,
19 that we got the school district excluded from the LID
20 because they were adding -- to add streets and a fire
21 hydrant, but the school district already had fire
22 hydrants and the access it needed.

23 So it was illegal for the City of Bellevue
24 to assess the school district property for adding
25 additional fire hydrants when it already had legally

1 sufficient and functional fire hydrants to serve the
2 school.

3 Here, if you've got a view, the City can't
4 charge for it. As -- as somehow either -- there is
5 no -- there are no data to show how that dissection was
6 accomplished, or that it's been reasonably accomplished
7 or actually accomplished, or accomplished in any way
8 other than speculation.

9 I mean -- characterized by Mr. Macaulay as
10 professional judgment.

11 Another case on the same principle -- well,
12 I'm sorry -- that was appeal of Jones case, 52 Wn.2d
13 143, that's the -- the fire hydrant case.

14 A similar case was Douglas v, Spokane
15 County, 115 Wn.App. 900, where the court annulled
16 assessments where the market value did not change after
17 creation of a ULID which expanded sewer service to
18 properties near the owners' parcels but did not directly
19 affect owners' parcels which were already connected to
20 sewer.

21 So again, there are no data -- and there's
22 no data-driven analysis in the final benefits study of
23 what real or hypothetical increase in property value was
24 due to pre-existing increased views or removal of the
25 viaduct.

1 So similarly, the levy has to be split if
2 there are components of the improvements that really
3 don't add value, even if you want them, that's fine.
4 The City can -- can install them, but they can't be part
5 of the special benefit assessment.

6 And so, In re Schmitz is a case, 44 Wn.2d
7 429, only that portion of the cost of the local
8 improvement which is of special benefit to the property
9 can be levied against the property.

10 And in that case, assessment levy for the
11 purpose of raising the grade of a road by 16 to 18 feet
12 was invalid because the evidence showed that the
13 specially benefitted properties could have benefitted
14 equally from an increase to only nine feet. The court
15 emphasized the basic principle and the very life of the
16 doctrine of special assessments is that there can be no
17 special assessment to pay for a thing that has conferred
18 no special benefit upon the property assessed.

19 And -- and in this case, just as one
20 example, it is -- it is unclear what incremental,
21 additional special benefit accrues to the neighboring
22 property owners from many of the LID improvements when
23 compared with projects assumed completed in the before
24 condition.

25 So, as one example, WSDOT has proposed to

1 plant a bunch of trees with a -- two-and-a-half-inch
2 diameter. The promenade trees will be more varied and
3 up to a four-inch diameter. It is not at all clear how
4 that provides any special market lift to the 6,000
5 assessed properties or the 31 we're representing here.

6 And I don't think Mr. Macaulay made any
7 attempt to try and tease that out. I mean, he just made
8 an assumption that this is what they're building, I
9 think it's better than that, and I'm going to make an
10 estimation of how I calculate the better.

11 Now -- so the next question is: Are these
12 special benefits that are going to be delivered in the
13 future at all speculative? And we believe they are.

14 So Mr. Macaulay assumed that the
15 improvements would be permitted and built according to
16 the designs and in accordance with the construction
17 schedules he was provided by the City. And then he
18 hypothesized they're already built. But the City has
19 acknowledged that the design plans, costs and
20 construction schedules are subject to change and subject
21 to discretionary permits.

22 So, you know, Pier 58 is the most obvious
23 example, because, again, it is the park. Used to be
24 called the Waterfront Park, until now it's called Pier
25 58 because it's part of the Waterfront Park.

1 But the City has not started SEPA yet.
2 There's no indication they've started NEPA yet. There
3 are federal permits required. So they're going to need
4 that.

5 And you've got Corps 404 permit, probably a
6 Corps Section 10 permit, 401 permit, State 40 -- yeah,
7 401 certification by the State. You'd have coastal zone
8 consistency, State Shoreline Master Program, Substantial
9 Development Permit, and, in this case, because it's a
10 49,000-square-foot development, it exceeds the City's
11 local permitting jurisdiction and has an ecology permit,
12 and Endangered Species Act and Tribal consultation,
13 among others, as we understand what they're doing and
14 subject to the testimony of the City's witness
15 clarifying or changing that pretty daunting gauntlet.

16 If you looked, at for example,
17 reconstruction of the Mukilteo Ferry Terminal, that's
18 not a five-year project, or now four years. There's a
19 lot that's happening, and there's a lot that could
20 change.

21 I mean, they have to consider -- the City
22 has to consider, among other things, a no-action
23 alternative. Whether that happens or people say, yeah,
24 no, the park is a really good idea, is still a question
25 that has to be reserved for SEPA review and fairly

1 undertaken. This LID commits the City to build
2 something without having done that.

3 It isn't -- it is possible that people would
4 say, I'd like it half as big, or I'd like to see a
5 salmon spawning beach over here, or any of a host of
6 other potential changes that come through the course of
7 SEPA review, NEPA review, Endangered Species Act
8 consultation, and this series of discretionary permits,
9 all of which are going to be decisions made by other
10 entities, not the City.

11 So he's assumed that all those improvements
12 are going to be built the way the City is currently
13 anticipating, and, in fact, that they've already been
14 built.

15 I think that assessment, without any
16 acknowledgement of the potential for material change or
17 even deletion of project components, is not a reasonably
18 probable assumption.

19 Material changes, under the City's LID
20 ordinance, are not permitted because the City Council
21 says you can make changes as long as they do not
22 materially affect the LID purpose, cost, or completion
23 date.

24 I mean, it's just kind of -- it's an
25 inherent conflict in how the City's ordinance

1 anticipates the LID improvements will be reviewed,
2 constructed, and delivered versus reality of what a --
3 an entitlement process for improvements like these,
4 49,000 square feet over water, entail.

5 Another thing -- another omission in
6 Mr. Macaulay's study is a consideration that there's any
7 element of the future LID improvements that might be
8 detrimental.

9 So there's a case -- Kusky v. City of
10 Goldendale, 85 Wn.App.,483 [sic], involved street
11 improvements. And the question was whether removing
12 gasoline tanks on city property and the cleanup cost was
13 a benefit to any of the properties in the LID.

14 But what Mr. Macaulay didn't consider were
15 the different ways where, from a market perspective,
16 components of the LID might actually decrease the value
17 of adjacent properties.

18 And apart from the fact, first of all, that
19 there's this five-year construction delay, minimum,
20 before delivery, the way they're designed is to
21 eliminate quite a few parking areas.

22 They're moving -- they're anticipating
23 moving the connectivity points from Harbor Steps up to
24 the Overlook Walk. I mean, there's -- it's kind of a
25 focus of going two different ways. But so -- if you

1 look at the Four Seasons, as an example -- and I'm
2 anticipating some testimony here -- they have a garage
3 that serves retail and condos.

4 If there are a dramatic loss of parking
5 stalls on the waterfront, then they believe they are
6 going to need to start to have employees to enforce
7 parking limits in that garage so that people don't walk
8 off to the waterfront. That's a detriment to them as
9 opposed to a benefit.

10 Similarly, again, anticipating some of the
11 later presentations -- the Harbor Steps Apartments are
12 at Harbor Steps. And the question is whether there is
13 increased value to those apartments based on the fact
14 that you're moving traffic, pedestrian connectivity,
15 whatnot, up to the market, rather than where Harbor
16 Steps is.

17 It's just -- it's a function of the fact
18 that there's a whole lot of variable in the analysis
19 that is just, frankly, too much for Mr. Macaulay,
20 especially given the scope of this LID, you know,
21 basically the entire downtown core, to try and actually
22 consider that sort of individual property special
23 benefit, actual, material and not speculative.

24 And then, of course, there's also the
25 hypothetical that characterizing the improvements as a

1 park will somehow allow the City to dramatically improve
2 the regulation of sanitation, safety, and -- and
3 attractiveness, which -- which is, again, a hypothetical
4 that is not yet at least supported by facts.

5 So toward that end, Eaton would say -- and,
6 again, this is by analogy -- under the doctrine of
7 reasonable probability, a property cannot be valued as
8 if it were already rezoned for a higher use.

9 And the same is true if you're valuing in
10 the Washington pattern condemnation instruction. If
11 you're valuing property, you can value it as though it
12 is rezoned if that's a reasonable probability. But you
13 are supposed to value the property in view of the uses
14 permitted under present zoning. However, if there's a
15 reasonable probability that zoning will be changed in
16 the near future, question what near future means, you
17 may consider the effect of such probability on fair
18 market value of the property.

19 So here -- back to the -- to that litany of
20 issues we've raised, they are assuming -- the City's
21 appraiser is assuming this stuff is already done. There
22 is no risk that it will not be done. There is no risk
23 on schedule. There is no risk it will be materially
24 changed, and, at a minimum, you have to have a
25 reasonable probability that these -- that these facts

1 that he's assuming are going to come true or it becomes
2 a hypothetical.

3 Ironically, Mr. Macaulay just says, well,
4 that's right. It is a hypothetical. I've just assumed
5 it's all done, it's all done as the City is planning,
6 and it's all -- all already done.

7 I think, at a very fundamental level, that
8 analysis is entirely inconsistent with what is expected
9 in an LID proceeding to actually charge people for the
10 actual benefits of actual improvements that are actually
11 going to be constructed.

12 So the City's attempting to charge property
13 owners before the improvements are built or even
14 permitted based on flawed methods, arbitrary
15 assumptions, and hypotheticals and without considering
16 the substantial risk that the special benefits may
17 materially change, may be materially delayed and
18 conceivably never materialize.

19 On that basis, we -- the objectors jointly
20 and respectfully request the examiner find the final
21 study flawed, and recommend that the Council ask that
22 the study be redone before -- before the assessment is
23 finalized, and following completion of the discretionary
24 permitting process for the LID improvements, so there is
25 actually a reasonable probability that what is analyzed

1 as to be delivered will be delivered.

2 Thank you.

3 HEARING EXAMINER VANCIL: Thank you. We'll
4 return at 10:20.

5 (A break was taken from 10:10 a.m. to 10:24 a.m.)

6 HEARING EXAMINER VANCIL: Okay. We're
7 returning to the record.

8 MR. LUTZ: Mr. Examiner, I also realized --
9 and Galen just left -- that I didn't ask that this
10 former -- formally be --

11 HEARING EXAMINER VANCIL: Yes, I have two
12 items from you. There's an opening brief and then
13 objections to the final assessment waterfront LID, they
14 have been marked respectfully as Exhibits 1 and 2.

15 Any objections?

16 MR. LUTZ: So the -- sorry.

17 MR. FILIPINI: No objections.

18 HEARING EXAMINER VANCIL: Exhibits 1 and 2
19 are admitted.

20 MR. LUTZ: So the opening brief is 1, and
21 the --

22 HEARING EXAMINER VANCIL: Yes.

23 MR. LUTZ: -- pages are two. Okay. Thank
24 you.

25 So that will change it a little bit more.

1 And then another assumption we made, which,
2 like your recommendation, had a fix if we need to, is
3 that we had assumed we could cite to the City's final
4 benefits study, which is online and is the basis for the
5 assessments, without independently introducing the final
6 benefits study as an exhibit.

7 HEARING EXAMINER VANCIL: I'm assuming it's
8 been admitted as an exhibit previously. We can do that.
9 But we can't just reference documents that are not just
10 online -- because they're online. I mean, we have to
11 get it in the record; right?

12 So if you can reference something in it in
13 the record, then we can --

14 MR. LUTZ: Well, and that's an interesting
15 question. Because you were talking about it at the
16 outset that we were supposed to have filed our discovery
17 motions, you know, before -- before because the process
18 has already started. The process is based on the City's
19 adoption of the proposed final assessment based on the
20 benefit study. But --

21 HEARING EXAMINER VANCIL: I'm not even sure
22 what you just said.

23 MR. LUTZ: Okay. And --

24 HEARING EXAMINER VANCIL: The hearing was
25 noticed in -- at the end of December. And there was a

1 period between that notice and February 4th that there
2 was plenty of opportunity for people to start to
3 initiate discovery.

4 MR. LUTZ: Right, but -- but I guess my
5 question was, there was -- the way I understood your
6 ruling was that you believe it started as of the --

7 HEARING EXAMINER VANCIL: The hearing
8 started on February 4th. This is a consolidated hearing
9 for all objections.

10 MR. LUTZ: Okay.

11 HEARING EXAMINER VANCIL: It's segmented by
12 case number, because what we -- you know, parties can
13 certainly adopt by, you know, the items that have been
14 introduced by -- in other case numbers, but this is an
15 ongoing open hearing --

16 MR. LUTZ: Okay.

17 HEARING EXAMINER VANCIL: -- from
18 February 4th through to now.

19 Your segment of the hearing, the time you
20 have dedicated for, has started today and will run
21 through the dates that we set aside. Other parties have
22 had their segments for opportunity for testimony.

23 And it's a little different than some
24 consolidated hearings, where all the parties show up at
25 the same time, in which case, they all get to introduce

1 evidence during that time, as long as the hearing is
2 open. They all have the same closing requirements. But
3 because that would be an extreme inconvenience to
4 individuals to all have show up at the same --
5 throughout the whole hearing.

6 MR. LUTZ: Right.

7 HEARING EXAMINER VANCIL: They show up,
8 that's their chance to do testimony and introduce
9 things, not to keep -- just because there's other people
10 going, to keep throwing paper at them.

11 MR. LUTZ: Absolutely.

12 HEARING EXAMINER VANCIL: And it seems that
13 it worked.

14 As far as I can tell, we've actually gotten
15 everything in the record everybody's asked for. If it's
16 been a little truncated or off, it's -- we're making it
17 up as we go, as we're addressing a hearing for one of
18 the largest LID the City has done before.

19 MR. LUTZ: Right. Well, and -- and I'm
20 looking and --

21 HEARING EXAMINER VANCIL: So if there is a
22 case in which that has been introduced -- I believe it
23 was introduced in our last set of cases, but I don't
24 have those numbers in front of me right now -- or the
25 exhibit list in front of me right now.

1 MR. LUTZ: Right. And Galen -- and Galen
2 has handed me -- excuse me, Mr. Edlund-Cho has handed me
3 the exhibit list from an earlier case which has as
4 Exhibit 19, the ABS Valuation Summary of Final Special
5 Benefit Proportionate Assessment Study For Waterfront
6 Seattle Project LID. And then that is exhibit -- and
7 that was Exhibit 19, former Tab 18.

8 And then Exhibit 31, former Tab 19, is the
9 ABS Valuation Summary of Special Benefit Proportionate
10 Assessment Study For Waterfront Seattle LI- -- Project
11 LID Addenda Volume.

12 I'm -- I believe those are complete, but I
13 would need to --

14 HEARING EXAMINER VANCIL: Mr. Edlund-Cho is
15 going to get those right now and roll the cart in with
16 all of those exhibits on it from that case.

17 MR. LUTZ: And then we'll just double-check
18 it.

19 HEARING EXAMINER VANCIL: And let me know if
20 you want to adopt those by reference for your case.

21 MR. LUTZ: Okay.

22 HEARING EXAMINER VANCIL: And so you've
23 requested -- do you have the case numbers for that case
24 on that exhibit list?

25 MR. LUTZ: No, I'm sorry. That's the one

1 thing it doesn't have.

2 HEARING EXAMINER VANCIL: So we had a series
3 of documents introduced for case numbers, case 336, 337,
4 339, 340, and 342, which all appeared at the same time.

5 Those documents were introduced as
6 Exhibits 1 to 56 for those cases. Mr. Lutz is
7 requesting to take a look at Exhibit 19. And Mr. Lutz,
8 did you have another one that you were looking for?

9 MR. LUTZ: There were -- I think it's just
10 Exhibit 19 and Exhibit 31. I was consulting with
11 Mr. Gibbons, who was a witness in that proceeding.

12 HEARING EXAMINER VANCIL: This notebook
13 includes 19 through 30. The first one is 19. Please
14 review 19 and determine whether you want to adopt that
15 by reference.

16 MR. LUTZ: Okay. Thank you.

17 (Off-record discussion.)

18 MR. LUTZ: Yes. 19, we would like to adopt
19 19.

20 HEARING EXAMINER VANCIL: Okay. And 31?

21 MR. LUTZ: And 31, thank you.

22 (Off-record discussion.)

23 MR. LUTZ: All right. Keep it out?

24 MR. GIBBONS: Well, if we -- if you're going
25 to ask me to refer to it.

1 MR. LUTZ: I'm just using your --

2 MR. GIBBONS: Making sure it's in. Okay.

3 MR. LUTZ: Yeah, I'm just making sure it's
4 in. Yes. 31.

5 HEARING EXAMINER VANCIL: All right. So
6 that I can keep things straight within the case numbers,
7 we'll assign new case numbers to these same documents
8 within your case numbers, which we have for you.

9 And so Exhibit 19, the -- which is the
10 summary, and I believe it's the entirety of the Special
11 Benefit Report, will be your Exhibit 3.

12 MR. LUTZ: Okay.

13 (Off-record discussion.)

14 HEARING EXAMINER VANCIL: And then the
15 addenda volume, which was 31 from the other case, is
16 your Exhibit 4.

17 MR. LUTZ: Thank you, Mr. Examiner.

18 (Off-record discussion.)

19 MR. LUTZ: We're ready to proceed.

20 HEARING EXAMINER VANCIL: It's your case.

21 MR. LUTZ: Mr. Gibbons. Calling
22 Anthony Gibbons.

23 HEARING EXAMINER VANCIL: Good morning,
24 Mr. Gibbons. Can you state your name and spell it for
25 the record?

1 MR. GIBBONS: Anthony Gibbons. Anthony with
2 an H. G-i-b-b-o-n-s.

3 HEARING EXAMINER VANCIL: And do you swear
4 or affirm the testimony you provide today is going to be
5 the truth?

6 THE WITNESS: I do, yes.

7
8 ANTHONY GIBBONS, witness herein, having been
9 first duly sworn on oath,
10 was examined and testified
11 as follows:

12
13 DIRECT EXAMINATION

14 BY MR. LUTZ:

15 **Q. Can you describe your appraisal background?**

16 A. Yes, I've been appraising real estate since
17 1983, 37 years. It's all I've -- all I've done in my
18 professional career. And --

19 HEARING EXAMINER VANCIL: As this is a
20 consolidated hearing and Mr. Gibbons has testified
21 before, I don't know if you had an opportunity to
22 consult with the counsel for the case numbers I had
23 listed earlier 336, 37, 39 and 40, but this is a
24 consolidated hearing.

25 And so Mr. Gibbons has already described his

1 background in that. If you need him to go through the
2 whole thing again, we can. But it might be more
3 efficient to identify if there's something that wasn't
4 introduced at that time and simply adopt by reference
5 his testimony from that to this.

6 MR. LUTZ: Okay. And -- with apologies,
7 part of the reason we've prepared his presentation to be
8 somewhat redundant, was based on the advice at the
9 February 4th hearing that, because they were separate
10 appeal numbers, we would need to introduce it
11 individually. And we thought --

12 HEARING EXAMINER VANCIL: Yes, that's
13 correct. You do. One efficient way to do that is to
14 adopt by reference and simply say, he's given his whole
15 résumé in case numbers XX, and be done with it. If you
16 want him to do it again in front of me, you may.

17 But it's in the record of a consolidated
18 hearing so it's all part of that record.

19 But for it to apply to your case, you simply
20 have to say, just as you have with these exhibits, I'd
21 like to adopt by reference.

22 MR. LUTZ: Okay. I would also like to adopt
23 by reference Mr. Gibbons' background and professional
24 qualifications from the same proceeding that exhibits --

25 HEARING EXAMINER VANCIL: And I've stated

1 the case numbers already. You might want to make a note
2 of them because I think you're going to have maybe even
3 some overlaps --

4 MR. LUTZ: Yeah, that's true. So --

5 HEARING EXAMINER VANCIL: So those case
6 numbers were 336, 337, 339, 340, and 342.

7 MR. LUTZ: Okay. Thank you.

8 HEARING EXAMINER VANCIL: And you can adopt
9 by reference anything that was done in that hearing, or
10 portion of the hearing or any other. Just so I -- then
11 we're all clear that it applies to these case numbers
12 that you have.

13 MR. LUTZ: Okay. Thank you.

14 HEARING EXAMINER VANCIL: But there isn't a
15 need to do things over if they've already been presented
16 and you want to adopt by reference.

17 MR. LUTZ: All right. There will still be
18 some redundancy because we've learned more since he
19 testified, and so I think we'll go through a fair amount
20 of the presentation, regardless, and get the exhibits
21 in.

22 THE WITNESS: Okay.

23 BY MR. LUTZ:

24 **Q. And so can you describe, Mr. Gibbons, work**
25 **you've done related to special benefits?**

1 A. Yes. We -- we regularly opine on the -- either
2 the presence or absence of special benefits related
3 to -- we do a lot of work on Sound Transit stations, for
4 instance. And this is a continuing issue for that. And
5 I'm speaking in a seminar next month on special benefits
6 and general benefits.

7 So it's -- it's an issue of continuing to -- you
8 know, examination and discovery.

9 **Q. So have you been involved in court cases that**
10 **address special benefits?**

11 A. Yeah. We -- we had a case on a Sound Transit
12 station in front of Judge Downing, I believe it was in
13 2014. And I have a copy of the decision as an exhibit
14 to my testimony today.

15 **Q. Okay. I've got to find it.**

16 MR. LUTZ: Do we have the whole or an
17 excerpt? And somehow I'm not finding this.

18 BY MR. LUTZ:

19 **Q. Anthony, can you show me where it is?**

20 A. Yeah, I -- it's No. 3 in the stack. It's this
21 one.

22 **Q. Yeah, somehow it just didn't -- either that or**
23 **I'm not --**

24 A. Oh, yeah. Those aren't in order.

25 **Q. All right. Well, there you go.**

1 A. Do you want to take that?

2 **Q. Yes.**

3 A. Okay.

4 **Q. All right. I'm going to leave you this one.**

5 A. Okay.

6 MR. LUTZ: We'd like to introduce as
7 Exhibit 5, the document identified as Exhibit 3 in our
8 exhibit list, which is -- and can I have a copy of that
9 for --

10 HEARING EXAMINER VANCIL: Marked as
11 Exhibit 5.

12 BY MR. LUTZ:

13 **Q. Now, can you describe what the special benefit**
14 **issue was in that case?**

15 A. Yeah. I -- a couple of things I'd like to pull
16 up about it, because I think there -- there is a fallacy
17 in the Macaulay study related to the timing of special
18 benefit. And if you look at -- and this was an issue
19 that Sound Transit has appraisers put forth in this
20 trial, that they -- they were meant to assess special
21 benefit as of the date of value, which was the date they
22 were doing the assignment, as though the station were
23 complete.

24 And we disputed that. That is not -- that is
25 not the law. Actually Judge Downing cross-examined the

1 witness when he indicated that. It's not the law.

2 And you'll notice in his decision, which is item
3 number 11, he said -- it's the -- I believe it's the --
4 it's the fourth paragraph, starting, "the minimal."
5 It's about a little less than halfway down.

6 **Q. The fourth sentence in paragraph 11 on page 5?**

7 A. Five, yeah. "The minimal amount of impact of
8 the station is primarily due to the nature of the tenant
9 profile of the business park, but also due to it being
10 nearly a decade away. If there is to be an economic
11 boost felt from the arrival of light rail, such a
12 benefit is too remote and speculative today to be deemed
13 a factor in establishing the property's current value."

14 And the point I'd like to make is that,
15 oftentimes in LID studies, there is a shortcut that is
16 undertaken by an appraiser establishing before and after
17 as of a particular date, the same date. And usually
18 that's considered a reasonable approximation when the
19 project is like a six-month project or even a year
20 project.

21 But in the case of a special benefit to be
22 delivered four or five years later, that -- that
23 approximation clearly becomes an erroneous one in terms
24 when the receipt of the special benefit is. It's not
25 there at that time; it should not be assessed at that

1 time.

2 An appraiser is perfectly capable of looking
3 forward to a future event. We do full costs all the
4 time and determining what discount should be made. And
5 the literature speaks to that in my letter.

6 **Q. If we're going to go to your letter, why don't**
7 **we introduce that.**

8 A. Okay.

9 **Q. Before -- just before we move on to it.**

10 A. Yeah.

11 **Q. That would be your January 30, 2020, letter to**
12 **me?**

13 A. Yes.

14 **Q. And we'd like to introduce that as Exhibit 6.**

15 **HEARING EXAMINER VANCIL: So marked.**

16 BY MR. LUTZ:

17 **Q. Please proceed.**

18 **HEARING EXAMINER VANCIL: Mr. Lutz, could I**
19 **ask you a favor? Could you hand it to the City over the**
20 **table?**

21 MR. LUTZ: Oh, absolutely.

22 HEARING EXAMINER VANCIL: So we don't whack
23 the --

24 MR. LUTZ: Yeah, no kidding. Thank you very
25 much.

1 (Off-record discussion)

2 HEARING EXAMINER VANCIL: I would love to
3 get out of my seat for a regular basis. It would be
4 helpful if you just hand it to the a --

5 MR. LUTZ: Absolutely.

6 THE WITNESS: Well, it's on -- on page 3 of
7 my letter, the fourth paragraph there, this is a quote
8 from Jim Eaton. Jim Eaton is -- was Department of
9 Justice appraiser that wrote several texts on appraisal
10 theory. And he notes there, "The fair market value of
11 the" --

12 BY MR. LUTZ:

13 **Q. Where are we here? Before you start.**

14 A. It's the -- sorry, the fourth paragraph of
15 page 3.

16 **Q. Thank you.**

17 A. "The fair market value of the remainder as of
18 the date of valuation" -- which in this case would be
19 October 19th -- "shall reflect the time when the damage
20 or benefit caused by the proposed improvement or project
21 will actually be realized."

22 And that is, you know, a pure recognition of
23 factual reality of when something is received. And
24 appraisers are completely capable of discounting a
25 future benefit if it's not going to be received

1 immediately.

2 **Q. And Mr. Macaulay, in his deposition, described**
3 **the assumption that the benefits were already accrued as**
4 **of October 1, 2019, as a hypothetical condition.**

5 A. Yeah.

6 **Q. Can you talk a little bit about the appraisal**
7 **ideas of an extraordinary assumption and a hypothetical**
8 **condition?**

9 A. Yeah. I don't believe this is an appropriate
10 time for a hypothetical condition.

11 A hypothetical condition is something that's
12 actually not true. It's assumed for purposes of
13 analysis, not for -- and -- and to maybe test an
14 assumption. Like a client might say to you, what might
15 my property be worth if it was rezoned to this? And you
16 would say, okay, as a hypothetical -- it's not rezoned,
17 but as a hypothetical, he has to test that assumption.

18 But in relation to the receipt of a public
19 improvement, where the intention is to fairly assess a
20 property for the benefit received, if the hypothetical
21 elevates the special benefit received, then it's clearly
22 an error.

23 You know, the -- you should be assessed what the
24 special benefit is when the -- when you actually receive
25 it, not based on a hypothetical condition that is not

1 true. There's no reason for that, as part of the study.
2 The City or Mr. Macaulay could simply have said, I'm
3 going to assess a special benefit as of the date of this
4 receipt.

5 **Q. And -- and so if you -- let's change that**
6 **around. If he -- if he was assuming that the special**
7 **benefit is actually delivered as of 2024, that would**
8 **still be -- would that still be an extraordinary**
9 **assumption?**

10 A. Yeah, then you -- the difference between a
11 hypothetical and extraordinary assumption, an
12 extraordinary assumption is something you think is
13 reasonably probable that it's going to become true.
14 But, of course, you don't -- you don't know it's true.
15 But there's -- there's reasonable probability, a
16 forecast involved.

17 So a reasonable, extraordinary assumption would
18 be the park -- I think the park is going to be complete
19 by 2024. And that would be based on my interviews with
20 other planners or the people permitting the project. I
21 think that's a reasonable assumption, but I have to make
22 that assumption to do my analysis.

23 And so that's completely different from a
24 hypothetical, which is -- which is wrong, you know, but
25 the extraordinary assumption is assumed because it's

1 likely to be true.

2 **Q. Okay. Well, and let's go one step further. And**
3 **this may be a distinction between an extraordinary**
4 **assumption and a factual valuation.**

5 **But if you assume -- if you're assessing the**
6 **likelihood of delivery of improvements or a rezone in**
7 **five years as reasonably probable, how would a discount**
8 **analysis fit into that?**

9 **Would you -- if you do a discount, is it no**
10 **longer an extraordinary assumption or -- or can you**
11 **explain?**

12 A. It's still an assumption, because it's
13 representing a full cost of the future and it's -- you
14 may not have all the necessary facts. I mean, an
15 appraiser is not a permitting official. Permitting
16 is -- by nature, there are issues which could delay it.

17 You know, an appraiser understands this. So he
18 may decide, you know, I just have to make an assumption
19 about the delivery date, and I think it's reasonable,
20 and they'll put it in their analysis so somebody knows
21 how much value is attached to that event happening as
22 the appraiser has indicated.

23 So that's -- that's simply a forecast of an
24 event, and you would -- you would probably label it an
25 extraordinary assumption because you can't predict that

1 outcome.

2 So it's a little bit different than other
3 assumptions where, you know, it might be economic
4 forecast, et cetera, which are understood to be -- have
5 variables in them. But you're -- you're forecasting a
6 certain event. So, that way, you would make it an
7 assumption.

8 **Q. Okay. And I guess the last -- the last piece of**
9 **this is, if I am making the assumption -- if I am trying**
10 **to value improvements, I believe -- and we'll get to**
11 **this a little bit later. But as long as we're on the**
12 **topic, if we're valuing improvements, I believe**
13 **reasonably probably will be completed in five years --**

14 A. Yeah.

15 **Q. -- but I'm making the assessment of what value**
16 **lift is associated in the market with those benefits**
17 **that are anticipated to be delivered in five years, how**
18 **do I account for that delay in making a current**
19 **valuation of the benefit?**

20 A. Sure. And, you know, I took some pictures of
21 the area today, for instance, and what -- what you would
22 do is, you would -- you would have to relate it back to
23 the current conditions.

24 So you pull it --

25 **Q. While we're at it, I'll just --**

1 A. Okay.

2 MR. LUTZ: I'll hand it across the table.

3 MR. FILIPINI: That works.

4 MR. LUTZ: Do you want one too?

5 And here's a second.

6 HEARING EXAMINER VANCIL: We just need one.

7 MR. LUTZ: No, two pictures. And if they

8 can be labeled, like, Exhibit --

9 HEARING EXAMINER VANCIL: This will be
10 Exhibit 6.

11 MR. LUTZ: If it can be one exhibit, that's
12 great.

13 HEARING EXAMINER VANCIL: Exhibit 6 or 7?

14 MR. LUTZ: Seven.

15 And I'll hand you, Anthony -- and no, I'm
16 not going to bang your head -- the pictures.

17 BY MR. LUTZ:

18 **Q. You started to talk about pictures. I've**
19 **introduced Exhibit 7.**

20 **Can you describe what these two pictures are?**

21 A. Yeah, so these two pictures are of the central
22 waterfront area of both looking -- looking north, you
23 can -- you can north identify with the -- the wheel
24 there in the left-hand side of the picture. And in the
25 south, you can see the -- the stadium -- the stadium

1 roof just in the background.

2 So -- and they're taken from the commuter
3 overpass, coming out from the ferry.

4 And so, if you were assessing a special benefit
5 resulting from the improvement or beautification or, you
6 know, improvement of streets to this area, your -- your
7 question would be, is, okay, that project is going to be
8 complete in 2024, what's going to happen between now and
9 2024?

10 Because if it's going to be a construction
11 project, then the chances are I'm actually going to have
12 some special damages related to noise, lack of access,
13 the -- the -- being lost tenancies, for instance, down
14 there, due to that construction project.

15 So those would be things, they're necessary for
16 the project to be complete and to be put in place, and
17 they would have to be considered in application of the
18 project, and the -- any benefit that you've received.

19 So it would be looking -- the near term would be
20 this, and then you would evaluate the future condition.

21 **Q. And these pictures were taken when?**

22 A. This morning.

23 **Q. Okay. So these are pictures as of November --**
24 **March 3rd.**

25 **Is it your understanding that as of October 1,**

1 **2019, the viaduct was still in the demolition stage?**

2 A. Well, I -- I think October -- well, there were
3 parts of it that still were taken down. I think most
4 had been taken down in this area.

5 **Q. Okay. All right. So -- now, let's turn our**
6 **attention to the City's special benefit by Mr. Macaulay.**
7 **It's Exhibit 3, is the main benefit study, and Exhibit 4**
8 **is the appendices.**

9 A. Okay.

10 **Q. Can you talk about your involvement in the**
11 **analysis of this LID?**

12 A. Yeah, I attended many of the waterfront
13 hearings, and then I've reviewed the study -- when I
14 reviewed the preliminary study for BOMA, and then
15 laterally, I reviewed the completed study for two sets
16 of clients, some being represented by yourself.

17 So I've been long-term involved in it, you know,
18 back into -- actually going, really, as far back as
19 2012, when I first met with Jerry Johnson and the first
20 appraisers that were working on the study. I went to
21 several meetings there as well.

22 **Q. Okay. So over the course of time you've had**
23 **BOMA as a client?**

24 A. Yep.

25 **Q. Jack McCollough, or was he --**

1 A. Jack McCollough and Catherine Sanford, yes.

2 **Q. Okay. And then Darby DuComb?**

3 A. Darby DuComb.

4 **Q. And our firm?**

5 A. And yourself, yes.

6 **Q. Okay. Now, we'll probably get to it later a**

7 **little bit more.**

8 **Can you talk about the different images that**
9 **you've looked at, in terms of how this final benefit**
10 **assessment was going to be made?**

11 A. Yeah. One of my frustrations is being that
12 there was never a clear depiction of what the before
13 condition was. What's rather extraordinary about this
14 project is that the before condition is hypothesized.
15 It's not in place. It's not the current condition.
16 It's -- it's a condition that the City would need to
17 improve the property to, as compared to the -- the
18 condition the City is going to improve the property to
19 as part of the waterfront district. That creates a
20 special burden on the appraiser. And I think it creates
21 a special burden in truly ascertaining what the City
22 would do if the LID was not put in place.

23 And in the original waterfront meetings -- I've
24 got an exhibit here on the before and after, the --

25 MR. LUTZ: Can we go off the record for one

1 second? Actually two minutes?

2 HEARING EXAMINER VANCIL: With me here?

3 MR. LUTZ: Yes, with you here.

4 HEARING EXAMINER VANCIL: Do you want to
5 just take a break?

6 MR. LUTZ: Really what I wanted was, I
7 realized that there are probably some additional
8 exhibits from -- 336, 337, 339, 340 and 342, that we
9 could just adopt by reference again.

10 HEARING EXAMINER VANCIL: We would need to
11 do that on the record.

12 MR. LUTZ: Well, my question was whether you
13 were -- whether that would make sense, if we could take
14 just a minute to make sure that this is what I was --

15 HEARING EXAMINER VANCIL: Do you want to
16 take a break to do that?

17 MR. LUTZ: Yes.

18 HEARING EXAMINER VANCIL: Okay. We'll take
19 a -- how long do you need?

20 MR. LUTZ: Five minutes.

21 HEARING EXAMINER VANCIL: All right. I'll
22 be back at 11:01.

23 (A break was taken from 10:58 a.m. to 11:06 a.m.)

24 HEARING EXAMINER VANCIL: Return to the
25 record. Mr. Gibbons on direct.

1 MR. LUTZ: Yes. Thank you.

2 BY MR. LUTZ:

3 **Q. Mr. Gibbons, we were -- we were starting to talk**
4 **about images.**

5 **Now, you have an exhibit of the Seattle**
6 **Waterfront Program Diagram, June 2019.**

7 **Can you show us which one we're --**

8 A. The planned view?

9 **Q. Yeah. I just want to make sure I get the right**
10 **one.**

11 **Okay. So that will be Exhibit -- are we at 8?**

12 **HEARING EXAMINER VANCIL: Eight, yes.**

13 MR. LUTZ: Okay. Do you have --

14 MR. STILLWELL: Anthony, are they both of
15 the diagrams or just --

16 THE WITNESS: Yeah. Yeah, 8 -- they're a
17 comparison, yeah.

18 HEARING EXAMINER VANCIL: This will be
19 marked as Exhibit 8.

20 (Exhibit 8 marked.)

21 BY MR. LUTZ:

22 **Q. So can you describe your understanding of these**
23 **two exhibits? And make sure we know which page you're**
24 **referring to.**

25 A. And we'll go quickly because we've gone over

1 this before. 8, I wanted to submit 8 because 8 is a
2 comparison of the LID, both with and without. And I
3 think it's just important to point out the -- the
4 significant similarity between the plans and the fact
5 that the appraiser has not measured the lift that the
6 before position would take in estimating the project,
7 because he hasn't pulled it out. He hasn't measured the
8 difference between the current condition and the before
9 condition before measuring the after condition. So
10 that's the point I want to make about 8.

11 **Q. Now, let's move to Exhibit 9. It's the -- with**
12 **LID -- yeah, yeah, the pictures which was our original**
13 **15.**

14 MR. LUTZ: No, no, no. This is it. So this
15 one we need one for everybody. Okay.

16 HEARING EXAMINER VANCIL: This will be
17 marked as Exhibit 9.

18 (Exhibit 9 marked.)

19 BY MR. LUTZ:

20 **Q. And Mr. Gibbons, can you talk about why this**
21 **exhibit is relevant?**

22 **And I'd like to actually start -- there are not**
23 **page numbers. But I'd like you to start on page 8,**
24 **which has a cover sheet, "LID before and after images."**

25 A. Okay.

1 MR. FILIPINI: If I could just add -- we
2 don't know what this document is. Is it an expert from
3 final benefit study or --

4 HEARING EXAMINER VANCIL: Are you asking
5 to -- just clarification from --

6 MR. FILIPINI: Clarification, if we could,
7 as to -- from the witness as to what it is.

8 BY MR. LUTZ:

9 **Q. And, Anthony, you can provide the clarification.**

10 A. Yeah. During the waterfront hearing, there were
11 images presented -- some of the waterfront hearings,
12 there were images presented of the property. And if
13 you -- if you went to, an example, South Main Street,
14 looking northwest -- which is two pages after where
15 Mr. Lutz asked we start -- the images presented to the
16 public at that time provided just a picture of the
17 current condition and then they provided a picture of
18 the LID after condition.

19 And when those were presented, I asked the City
20 why they had no images of their before condition. And
21 Marshall questioned the need to go to that expense, and
22 I explained that if -- if an appraisal was to be made of
23 an aesthetic, we needed an image of the true before
24 condition.

25 And subsequently, these slides were produced. I

1 show them that -- I think it was sometime in May of last
2 year that they were produced by the City. But they are
3 from the City.

4 **Q. And when you say a "true before," what -- you're**
5 **not talking about what actually existed. This is a --**
6 **they're labeled as current condition, which is with the**
7 **viaduct, no-LID alternative, which is what I understand**
8 **to be the WSDOT improvements?**

9 A. Yeah.

10 **Q. And with LID, which I understand to be the City**
11 **improvements?**

12 A. That is correct.

13 **Q. So can you describe why you thought it was**
14 **inappropriate to go straight from what's labeled here,**
15 **"current condition," to with LID alternative?**

16 A. Because it suggested that the LID was being
17 compared to the property with the viaduct in place. And
18 that, of course, wasn't the case.

19 **Q. Well, and -- but why would it be appropriate --**
20 **why would it not be appropriate to compare the condition**
21 **with the viaduct in place or with no improvements, like**
22 **the picture you showed as Exhibit 7, and using that as**
23 **the before and the final waterfront improvements without**
24 **an intermediate conceptualization?**

25 A. Because the LID project is providing

1 enhancements over and above a requirement for certain
2 design standards already. And so you wouldn't -- if you
3 had an image of the project with -- without the design
4 standards in place, you would get a misguided notion of
5 what the LID was actually going to do.

6 You need that -- you need to know, well, what
7 would the City do anyway, and then what's the LID on top
8 of that.

9 And I'm only going to measure what the increment
10 of the LID on top of what the City would have to do
11 anyway.

12 **Q. So can you help us walk through these again to**
13 **kind of understand what --**

14 A. Yeah, so --

15 **Q. -- what the differences are?**

16 A. So if you -- just going to the Main Street one,
17 which is the first one. We ignore the current
18 condition, because that's really not part of the
19 equation.

20 The second -- the second one, no-LID
21 alternative. This is what the City would have to do
22 without the LID. And then you compare that to -- well,
23 with the LID alternative. And suddenly you get an
24 understanding of what you're actually comparing. You
25 know, there are street trees in both pictures, for

1 instance. There are sidewalks in both pictures. In
2 this particular one, you will notice illumination of
3 parking, for instance.

4 And it becomes much more of -- gives a much
5 better understanding of the changes that the LID will
6 actually create versus the before condition. And I felt
7 that was missing in the analysis. That -- that --
8 because we're appraising the setting.

9 **Q. Well -- and, again, just to be clear, because**
10 **now I'm getting confused a little bit.**

11 **The before -- what you're calling the before**
12 **condition here, or what's identified as the no-LID**
13 **alternative, still has components of hypothetical in it?**

14 A. Well, it does. You --

15 MR. FILIPINI: Object as leading.

16 HEARING EXAMINER VANCIL: Sustained.

17 THE WITNESS: Excuse me.

18 BY MR. LUTZ:

19 **Q. Can you please describe what existing is,**
20 **versus -- what existing is for purposes of an LID**
21 **assessment versus the two hypotheticals?**

22 A. Well, yeah. I mean, this creates a special
23 burden on the appraiser, because they cannot rely on
24 values and sale prices and market data already in the
25 marketplace for establishment of the before condition.

1 They cannot rely on that because the before condition
2 isn't in place.

3 So it means that the appraiser has to do a
4 two-step process. They have to take the current
5 condition, which is the pictures I took of -- of what's
6 actually down there, construction project, and they have
7 to say what is the lift in value that will occur between
8 the current condition and the assumed hypothetical
9 before condition that the City has to do anyway.

10 That lift is not to be considered -- cannot be
11 considered in the LID study.

12 I then have to take the hypothetical of before,
13 I take out that lift and then look -- I look at what the
14 increment is for the -- for the portion -- the LID
15 portion of the study funded on top of a street-scape.

16 And the -- the LID manual actually speaks to
17 this issue, that you have to exclude issues that are
18 required by design standards anyway. There's a -- we've
19 got an exhibit on that, which we will -- we can get to.

20 **Q. Okay. We'll get to that in a minute. Let's**
21 **keep on this for a second.**

22 A. Yeah.

23 **Q. So can you walk through this a little bit more,**
24 **just to show some of the -- the current versus no-LID**
25 **hypothetical and LID hypothetical?**

1 A. Yeah. So I -- we looked at the Main Street one.
2 The next one is Marion, from the pedestrian bridge,
3 which is the picture I took this morning. And you will
4 notice that the no-LID alternative has a street-scape,
5 street landscaping, sidewalks and a lot of parking. And
6 then the LID alternative has a very similar scene. No
7 parking in this one, because they're eliminating a lot
8 of parking. And with more green-scape, although this is
9 a picture in winter. And the trees are a little bit
10 bigger there.

11 And then if we go to Waterfront Park, you'll
12 notice that there's a pre-condition, which, again,
13 isn't -- isn't being measured -- or hasn't been
14 evaluated, the change from this to the no-LID
15 alternative, that change has not -- the impact of that
16 change is not being deducted from the appraiser's
17 assessment of special benefit. He just goes right to
18 the LID alternative, which in this one shows Miner's
19 Landing.

20 **Q. In 2023?**

21 A. In -- yeah, in 2023 or 2024.

22 **Q. Okay. Might -- I mean, I'd just like to keep**
23 **going through.**

24 A. Okay. Waterfront Park looking north. Again,
25 current condition shows the viaduct. The no-LID

1 alternative shows sidewalks and the boulevard with the
2 street trees.

3 And then the LID alternative is obviously a
4 little bit different. It's in summer, not winter. And
5 then it's got a wider street and some -- some retail
6 space there in the middle of the park, by the looks of
7 it.

8 And then down there by the -- the former
9 Harborscape building, by Waterfront Landings, this shows
10 what it would look like, current condition with the
11 viaduct, viaduct down and a wider sidewalk. And then
12 you can see an image of Overlook Walk in that -- that
13 picture. And Waterfront Landing is to the left.

14 **Q. Okay. And then the last one is from the --**

15 A. Yeah, Victor Steinbrueck Park. Just looking
16 down on the viaduct. And then looking down on the
17 street-scape as it would have been created if there had
18 been no LID. And then looking down on the street-scape
19 as it would be with the LID and the Overlook Walk.

20 **Q. And then as long as we're at it, can we go back**
21 **to -- page, 1, 2, 3, 4, 5 -- I think it's 6.**

22 **Now, there are side-by-side pictures here.**

23 **There's no third drawing. So what's the**
24 **difference, to your understanding, of these two**
25 **depictions versus the current no-LID, LID depictions we**

1 **were looking at previously?**

2 A. I actually -- I don't know. I assume there is
3 no -- that the current condition is the before
4 condition. You know, this is like a street-scape
5 improvement, by the looks of it.

6 **Q. Okay.**

7 A. So I don't know if they were going to do
8 something anyway on that street. It's -- perhaps not.

9 **Q. I'm sorry, the -- okay.**

10 **So let's go back to -- we had a series of**
11 **exhibits.**

12 **May I approach the witness?**

13 **HEARING EXAMINER VANCIL: All right.**

14 MR. LUTZ: Are we going to these now?

15 THE WITNESS: Sure, yeah. Sure.

16 MR. LUTZ: And we should just go all the way
17 to here?

18 THE WITNESS: Yeah.

19 MR. LUTZ: Okay.

20 THE WITNESS: We can go very quickly through
21 these.

22 MR. LUTZ: Okay. So we want to use, as
23 separate exhibits, 4, 5, 6, 7, 8, 9, 10.

24 MR. STILLWELL: I think those are --

25 MR. LUTZ: They should already be in order.

1 And it would start at Exhibit -- would -- are we at 10?

2 HEARING EXAMINER VANCIL: Yes.

3 MR. LUTZ: Okay. Starting at 10.

4 MR. STILLWELL: Page 26.

5 MR. LUTZ: Yeah. So we have a series of
6 exhibits to introduce.

7 So it would be proposed 10 through 16. Go
8 ahead, Jake. And you can hand them straight across.

9 BY MR. LUTZ:

10 **Q. So for Exhibit 10 --**

11 **HEARING EXAMINER VANCIL: Seven items to be**
12 **marked?**

13 MR. LUTZ: Yes.

14 HEARING EXAMINER VANCIL: Exhibits 10
15 through 16.

16 Can we at least identify them as they're
17 coming in so we know --

18 MR. LUTZ: Yeah. So Exhibit 10 is page 26
19 of the ABS Valuation Final Benefit -- or Final Special
20 Benefit Proportionate Assessment Study.

21 Exhibit 11, is page 59 of the Local and Road
22 Improvement District Manual for Washington State, Sixth
23 Edition. So page 65.

24 The third is page 65 from the same Local and
25 Road Improvement District Manual for Washington State,

1 as Exhibit 12.

2 Exhibit 13 is page 66 of the same Local and
3 Road Improvement Manual for Washington State.

4 Exhibit 14 is the cover page and page 35 --
5 or excuse me, page 334, excuse me -- of Real Estate
6 Valuation and Litigation Second Edition, JD Eaton, MAI
7 SRA. There's a reference at the bottom, 35, Iowa State
8 Commission v. Smith, but I believe that it's page 30 --
9 334 is identified at the top; is that correct?

10 THE WITNESS: Sorry, say that again.

11 MR. LUTZ: This is page 334 of the manual?

12 THE WITNESS: Yes. Yeah, I just copied the
13 fly sheet just so you know where it came from.

14 MR. LUTZ: Okay. So that's Exhibit 14.

15 Exhibit 15, would be page 2 from the City of
16 Seattle Department of Finance and Administrative
17 Services Special Benefit/Proportionate Assessment Study
18 for Local Improvement District.

19 And, Mr. Gibbons, is this from the final
20 benefit study?

21 THE WITNESS: Yes, it is.

22 MR. LUTZ: Okay. From the final benefit
23 study, not the formation study.

24 And then the last, Exhibit 16, is page 7
25 from the same Waterfront Seattle LID's Final Special

1 Benefits Study.

2 BY MR. LUTZ:

3 **Q. Now, we've talked before about the improvements**
4 **being delivered in 2024, but assumed in 2019. And we've**
5 **talked about the hypothetical before and the**
6 **hypothetical after.**

7 **Can you walk us through Exhibits 10, 11, 12, 13,**
8 **14, 15, and 16 as to how they pertain to that**
9 **combination of issues?**

10 A. Yeah. Well, basically the -- I wanted to pull
11 out these ones because I think it's illustrative, I
12 think, of some areas in the study.

13 The first exhibit, which is page 26, which is --

14 **Q. Page 26 of the benefits study?**

15 A. Yeah, page 26 of the benefits study. The
16 definition here is quite important. It says that
17 special benefit is specific, measurable in excess of
18 enhancement to the general area.

19 And so this requires the appraiser to both
20 consider the enhancement to the general area, and make
21 sure that that is deducted from the total benefit
22 measured.

23 And then the actual special benefit has to be
24 specific to the property and measurable. And I talked
25 to Paul before about the definition of special. It's

1 peculiar to the property. It's something that's
2 different from general. So that's what I wanted to pull
3 out there. And the study has not done that. It's a
4 very general assessment, so --

5 **Q. Well, and just to take one further, you haven't**
6 **highlighted it, but in the next paragraph, it talks**
7 **about all assessments meeting two criteria. The amount**
8 **may not materially exceed the special benefit to that**
9 **parcel, and all assessments within the district must be**
10 **fair and in proportion to other assessments.**

11 **Do you have an understanding of how Mr. Macaulay**
12 **purported to meet that standard?**

13 A. Well, I -- as I -- Mr. Macaulay assigned special
14 benefit. He did not measure it. It was not measured.

15 And so -- so the -- the issue about the tax
16 assessment cannot exceed the special benefit is
17 something different. That's not what he's doing. He's
18 looking at the actual value of the assessment.

19 So that, in my -- in my opinion, in looking at
20 the study, that was not measured; that was assigned.

21 And then the -- the assessments are not
22 proportional because of the manner in which he made the
23 assessments. He assessed land and improvements in such
24 a manner that it resulted in disproportional assessments
25 for properties that would be very similar at the time

1 the assessment was delivered.

2 **Q. And again, that's also a question of 2019 versus**
3 **2024?**

4 A. It is. Because, you know, if you have a vacant
5 property that's going to be improved with a motel --
6 hotel, like the Yesler parking lot, down there on the
7 waterfront, that -- that property is going to be a
8 citizenM™ hotel by the time the waterfront project is
9 complete, and yet, that property is assessed as land
10 value, has a much lower assessment than other hotels
11 much further away. And it's just disproportionate.

12 **Q. And an artifact of the artificial --**

13 A. Exactly.

14 MR. FILIPINI: Object as leading.

15 THE WITNESS: Excuse me.

16 MR. LUTZ: Please.

17 THE WITNESS: Okay. It --

18 HEARING EXAMINER VANCIL: Withdrawing the
19 question?

20 MR. LUTZ: And comment as to how the --

21 HEARING EXAMINER VANCIL: So there was an
22 objection --

23 MR. LUTZ: Yes, I withdraw the question. I
24 will rephrase.

25 BY MR. LUTZ:

1 **Q. And comment as to the relevance of the data**
2 **valuation on that point.**

3 A. Well, the -- it's -- if you were projecting --
4 if you'd done the study properly, projecting forward to
5 2024, then, in the case of that parcel, you would have
6 said these people are building a motel -- a hotel. It's
7 going to be complete by 2023. And therefore, you would
8 make the assessment based on what would be in place by
9 the time the improvements were delivered. And that was
10 not done. So again, disproportionate.

11 **Q. Okay. So let's move on -- is there anything**
12 **else on Exhibit 10 you want to comment before we move to**
13 **Exhibit 11?**

14 A. No.

15 **Q. Thank you. Please proceed.**

16 A. This is from the LID manual, which -- and this
17 was, in part, authored by Bob Macaulay and --

18 **Q. And can you describe what the LID manual is?**

19 A. Well, this is -- this is sort of a guidebook for
20 appraisers and attorneys in putting forth an LID. And
21 here we have this issue, you know, what -- this is a
22 regional park being built in the economic center of our
23 region, and this study does not have the word "general
24 benefits" in it. Not once.

25 And yet, the LID study requires you to consider

1 general benefits and not assess properties for general
2 benefit. And I think that -- that number -- note number
3 three was not followed in the -- in the preparation of
4 the study.

5 **Q. All right. Anything else on Exhibit 11?**

6 A. That's it.

7 **Q. Can you comment on what -- what relevance you
8 are assigning to Exhibit 12?**

9 A. 12, again, I highlighted a section here where
10 this is an instruction to the appraiser to be mindful of
11 what special benefits are. And special benefits refer
12 to special, as opposed to general benefits.

13 And, again, when you're thinking about putting
14 forward a study where, you know, something in the region
15 of 53 billion property you are asserting is being
16 benefitted, at some point you have to draw out, well,
17 how much of that is general and how much of that is
18 special? And, again, that was not done.

19 So this -- this admonition here, to make sure
20 that your benefits are special, not general, in the
21 measurement, I don't believe was followed in the study.

22 **Q. And this is all under the heading of the two
23 absolutes?**

24 A. Yes.

25 **Q. Now, Exhibit 13 is just a continuation of the**

1 **discussion on -- in Exhibit 12; correct?**

2 A. Yes.

3 **Q. So does it really start at the distinction**

4 **between -- I'm on Exhibit 12 still, the last sentence,**

5 **the distinction between public improvements, which are**

6 **local in character, as opposed to general, as explained**

7 **in another case. And then you've highlighted a quote**

8 **from the case?**

9 A. Yeah, exactly. I just felt that this is --

10 again, this is distinguishing between public

11 improvements, which benefit an entire community -- and

12 when you look at the descriptions of the park, that

13 certainly appears to be the intention of it -- and

14 versus being local in nature and -- and benefitting

15 primarily individual properties.

16 **Q. But before you move on, does it -- do you feel**

17 **like this is instructing a specific calculation of**

18 **general benefit or...**

19 A. Well, if -- if -- if a project is going to

20 confer general benefit, you either have to say, yeah,

21 how much -- you know, you're measuring with and without

22 the project, you have to decide how much is actually a

23 rising tide that floats up all boats that actually is

24 the general benefit, and deduct that from the total

25 benefit you calculated.

1 **Q. So you don't assume the general benefit is zero?**

2 A. No, no. In fact, that -- I think that would be
3 kind of unusual if the general benefit was zero.

4 **Q. And why is that?**

5 A. Well, because if you're going to construct a
6 regional park and you've read all these studies about
7 these benefits that exude from a regional park, to
8 assume all of them are special for those properties, I
9 think, is inaccurate. Some will be general benefits
10 from the provision of the park. And it's a matter of
11 clearly distinguishing between what you cite is special,
12 peculiar to a property in relation to the situation of
13 the property to the benefit, versus something that is
14 generally happening in the area at large.

15 And Mr. Macaulay's study does not separate out
16 these items.

17 **Q. Well, and let's use the stadium as an example.**
18 **You talked about how you would kind of conceptualize**
19 **that the -- the special versus the general benefit of**
20 **bringing --**

21 A. Yeah.

22 **Q. -- professional sports to Seattle?**

23 A. Yeah, it could create multitude of economic
24 benefits for a wide range of properties. And that would
25 be regarded as, you know, general. But if you were,

1 say, right next door to the stadium and you had a
2 restaurant business, then you might be specially
3 benefitted versus having that general lift of benefit.

4 **Q. Okay. Thank you.**

5 **Do you have anything else on Exhibits 12 or 13,**
6 **or shall we move to 14?**

7 A. 14.

8 **Q. Okay. Thank you.**

9 **Can you explain this Exhibit?**

10 A. Yes. I just felt this was -- this was -- this
11 was Mr. Eaton's example of a general benefit, a highway,
12 a freeway going through an area, providing greater
13 access. And all properties in that general area would
14 have access to that interstate and would -- there would
15 be a general lift of properties.

16 Now, some might be an interchange at the -- at
17 the freeway and that would be a special circumstance.
18 But the mere presence of the freeway in the neighborhood
19 would be general.

20 And I think when you go to this landscape
21 boulevard, you'll see many of those -- in fact, the vast
22 majority of boat properties in the downtown area have no
23 special association with the park at all. The park is
24 just in downtown and they're part of downtown.

25 And I think this, you know, it really speaks to

1 what is general and what is special. And I think that
2 issue is not being analyzed in depth by Mr. Macaulay and
3 is not be addressed by him in his study.

4 **Q. And Mr. -- and can you -- remind us, again, who**
5 **Mr. Eaton is?**

6 A. He's -- he was a Department of Justice
7 appraiser, also an MAI that wrote the book on federal
8 land acquisition guidelines for appraisers and
9 consideration of special and general benefit.

10 And he basically is regarded as -- as an
11 authoritative text by appraisers.

12 **Q. And before we move on to 15, you spoke earlier**
13 **about having done special benefit assignments.**

14 **How has -- how have you taken general benefits**
15 **into account in assigning special benefit?**

16 A. Well, for instance, we just did a property in
17 Marymoor Business Park that's going to be a LID station,
18 LID's right -- I'm sorry, LID station. Light rail
19 station.

20 **Q. Light rail station?**

21 A. Light rail is right across the street.

22 That property has a particular association with
23 that station being right across the street from it.
24 That's peculiar to that property. That's obviously
25 special to that property. Very few properties are

1 actually adjacent, clearly a special benefit.

2 If you look at the area in general, this seems
3 to be an acceleration of growth that you can see by sort
4 of interest. How -- what the walking distances are to
5 light rail. And suddenly you get a sense there's
6 probably also a general lift in the community.

7 And we looked at that, tried to measure that,
8 and deducted that from the benefit that we were
9 assigning this property for being next to the station.

10 So we actually separated out the general benefit
11 and separated out the special benefit.

12 **Q. So you don't think it's impossible to do a**
13 **benefit study that analyzes and distinguishes between**
14 **general and special?**

15 A. I -- if you can't do it, you can't do the
16 special benefits study. If you can't isolate that
17 general influence, can't do the special benefits study.

18 Because how do you know when it's general and
19 when it's special? And how does your reader know? And,
20 you know, what is the criteria? So, yeah, I don't --
21 if -- if you can't measure it, then you can't measure
22 special benefit.

23 **Q. Okay. Let's move on to 15. What's --**

24 A. Well --

25 **Q. What are we looking at here?**

1 A. -- this -- this is sort of almost by way of
2 summation.

3 **Q. And, again, we're at page 2 of -- we're**
4 **commenting on page 2 of the Macaulay Special Benefit**
5 **Proportional Assessment Final Study.**

6 A. And this is really just reviewing my criticism
7 of the study that these benefits here, that they've been
8 outlined here. This is clearly an assignment of
9 benefit.

10 These are conclusions that are made and
11 adjustments made to before values to calculate this
12 lift. These are not measured values. They're assigned
13 values. That is -- that is completely arbitrary. You
14 know, it's -- there's no measurement of that increase.
15 It's merely an assignment. And -- and I think that's
16 incorrect.

17 The -- the benefits should be measured. And
18 let's think about it. There are parks all over this --
19 over Seattle. You know, there's Cal Anderson Park, up
20 on Capitol Hill. What's the benefit of being close to
21 that park?

22 Lake Union Park, South Lake Union Park; what's
23 the benefit of being close to that park?

24 Discovery Park. Green Lake; you know, what's
25 the benefit of being close to that park?

1 You know, you could do matched pair studies,
2 Discovery Park with Ballard. You could do matched pair
3 studies that looked at what is the beneficial
4 association in having a park in that community and --
5 and how much of a rise of property does it create, if
6 you can measure it. And -- and none of that was done.
7 There's not a single study in Seattle that measured it.
8 It's merely just assigned. It's not measured.

9 **Q. And using those examples, some of them are**
10 **waterfront and some of them are not?**

11 A. Yeah, exactly. Kirkland has a park. You know,
12 Downtown Kirkland has a park. Where's the study -- you
13 know, Kirkland has office buildings, and apartments, and
14 condos. Where's the study that shows where a benefit
15 would be created by those improvements?

16 So there are lots of examples locally not
17 measured. You know, we go to different cities, grander
18 parks, you know, there's -- I think things should be
19 kept local. And I think if -- if this -- if this were
20 true, that this would happen in Seattle, then there has
21 to be an example of it happening and being in place.
22 And there are long-standing parks in areas, and you
23 should be able to tease out -- if you can measure it,
24 you should be able to tease it out and measure it. And
25 it's not done as part of this study.

1 **Q. So just to -- to characterize this debate. It**
2 **sounds like it's Mr. Macaulay going from grand park**
3 **examples in other cities without local park comparable**
4 **sale data. And your recommendation would be to start**
5 **with the local first and then to use -- to expand if you**
6 **needed to?**

7 A. Yeah, because the -- all the information that
8 I've read from his study on those areas is anecdotal.
9 Oh, yeah, from a broker or something, yeah, this -- this
10 is -- increase this, and then -- there's too much noise
11 in there. You know, there's views considered where
12 views aren't meant to be considered.

13 The area that might have been an old industrial
14 area, then converted to a park, well, that's not what we
15 have in Downtown Seattle.

16 It's going to be a newly improved street versus
17 a street with more trees and a boulevard. So yeah,
18 absolutely. I think that -- that it should have -- if
19 three percent -- and -- and as I've said before, these
20 percentage increases fall lower than the margin of error
21 in the analysis and clearly can't be measured. You
22 cannot measure -- you cannot measure one percent of a
23 difference in a high-rise building for this kind of a
24 medium. It just can't be done. And therefore, it's
25 simply assigned to a before value. And I don't think

1 that that's -- that's accurate and meets the standard.

2 So if you could show that, then we should have
3 local studies showing that.

4 **Q. And can you comment a little bit further about**
5 **the current condition -- the before hypothetical and the**
6 **after hypothetical in light of that omission from his**
7 **analysis?**

8 A. Well, that further compounds the complexity,
9 obviously, because we have to -- we have to make
10 assumptions about what the before condition would really
11 look like. You know, I mean -- there's been discussion
12 about the diameter of the trees.

13 You know, I think, you know, we're getting down
14 to a level where the -- the ability for an appraiser to
15 discern a value difference between the diameter of a
16 tree, I think it verges on being ludicrous.

17 It's -- you know, clearly, at some point, you
18 have to have a really well-defined set of criteria.
19 These images came very late in the day. I think they're
20 helpful in trying to see what the differences are. But
21 then we need to layer the other things on how long is it
22 going to take, where are the improvements, you know --
23 every -- every -- this is a long boulevard, big
24 differences in certain sections. Where are they? How
25 far are you away?

1 There's just a lot -- you know, 50 --
2 \$50 billion of real estate, it's -- in my mind, it's an
3 overwhelming project.

4 And to -- and to suggest that \$56 billion of
5 real estate increases by .8 percent because of this
6 facility, that -- I don't think that meets any appraisal
7 standard that I've seen.

8 **Q. How would you use comparative sales, as an**
9 **example, from these other waterfront parks to try and**
10 **tease out the value as exists, the hypothesis of a WSDOT**
11 **completed project and the hypothesis of a grander park,**
12 **if you could?**

13 A. Well, I'm not sure it could be done. You know,
14 in -- in reading Mr. Macaulay's deposition, he -- for
15 instance, you know, there's an example offered that he
16 reckoned the food and beverage cost per person would --
17 in a hotel, would increase from \$35 by 1.75 percent to
18 \$35.61. You know --

19 **Q. Because of the Waterfront Park?**

20 A. Because of the Waterfront Park for a hotel
21 located several blocks away from the park. That's an
22 assignment of an increase.

23 He's not actually going to say the Marriott down
24 near South Lake Union and say, well, the manager
25 reports, yeah, actually, we managed to sell a little bit

1 more per room because we find people like to walk to the
2 park, and I can show you that side-by-side figure and
3 here's the difference.

4 I mean, it -- to just assign that kind of
5 difference is -- it's pure speculation. It's
6 imagination. It's imaginative and it's speculative to
7 do that without the data to do that. There's nothing
8 I've seen that says 1.75 percent is the -- the
9 measurement. How do you come up with something like
10 that?

11 So I just -- I don't -- I don't think the rigor
12 is there to prove that a property has had a rise in
13 value of that amount.

14 **Q. Is there any assessment -- any component of this**
15 **assessment, because of the hypothetical before, that is**
16 **collecting money from improve -- from improvements that**
17 **are supposed to be excluded and don't exist?**

18 A. Well, since he's used current values, which are
19 based on what is there now, what -- what I found was
20 missing from the study is, I would want to see -- the
21 City is required to put in a improvement infrastructure
22 down there, very similar, actually, to what the LID is.
23 When you look at the two -- and we looked at this
24 example -- they're very similar. They have street
25 trees. They have a boulevard, it's just less

1 landscaping. But I would -- if that -- if the LID adds
2 value, then surely the before condition adds value.

3 And if you're using current values and going to
4 the finished product, then you're not including the
5 value lift that -- that comes in from the before
6 condition.

7 **Q. Well, I'd ask it a different way.**

8 **If Mr. Macaulay purports to have accounted for**
9 **that before-value lift by making the hypothetical that**
10 **it's all built, if he is assuming the value of the**
11 **properties is \$10 million more in the before because of**
12 **hypothetical improvements, how would that translate into**
13 **the assessment, if the difference between before and**
14 **after is a three percent lift?**

15 A. Well, I'm not quite sure how to answer that,
16 because of what he hasn't done. All I'm saying is, if
17 he -- if he uses current values, which do not have the
18 hypothetical before --

19 **Q. Right.**

20 A. -- and he goes to the hypothetical after,
21 he's -- he's -- his net is bringing in --

22 **Q. Both?**

23 A. Both, yeah.

24 **Q. And so in that -- in that scenario, he's**
25 **actually collecting on -- to use an example, the**

1 **demolition of the viaduct and road improvements that are**
2 **otherwise being --**

3 MR. FILIPINI: Object as leading.

4 THE WITNESS: Well --

5 HEARING EXAMINER VANCIL: Response to the
6 objection.

7 MR. LUTZ: I can withdraw it and restate it.

8 BY MR. LUTZ:

9 **Q. Would you comment upon the effect on the LID**
10 **assessment if there is no analysis of the intermediate**
11 **step and you're going from the current to the LID**
12 **improvements?**

13 A. Then you're assessing property owners for fixing
14 the post construction condition to a street-level design
15 condition.

16 And the LID manual actually warns you against --
17 you know, don't -- don't sweep up design changes that
18 are required anyway by law. You know, you've got to --
19 you should get -- you know, you need to measure -- he
20 should have measured, well, here's the total lift and
21 this part was being created by the before condition, and
22 subtracted it.

23 **Q. Okay. And -- and so flipping this question**
24 **around, this is the -- the hypothetical I have is, if --**
25 **if you assume, as I believe Mr. Macaulay asserts, that**

1 **he did analyze the before values as the hypothetical**
2 **values, as opposed to the current condition.**

3 **And so he is increasing -- his analysis**
4 **increases the before value by, let's just use an**
5 **example, from 300 million to 310 million for an asset.**
6 **There's \$10 million, in his view, of hypothetical value**
7 **to go from current to before.**

8 **How would that \$10 million hypothetical**
9 **improvement translate into -- or would that hypothetical**
10 **\$10 million before market value increase translate into**
11 **an increased assessment for that property?**

12 A. Well, it would be swept up as part -- he would
13 consider that special benefit, because he hasn't -- he
14 hasn't "segged" it out.

15 **Q. Yeah, and I guess I'm asking the other question.**
16 **If you assume it's in the before, but the before becomes**
17 **\$10 million more based on a hypothetical --**

18 A. Yeah.

19 **Q. -- and the assessment is otherwise based on a**
20 **percentage --**

21 A. Oh, then -- then you're doing a percentage on
22 top of the 10 million.

23 **Q. You're doing a percentage on top of the 10**
24 **million?**

25 A. Yeah. But -- but actually --

1 **Q. Well, before you get to the -- before you get to**
2 **the but actually --**

3 A. Yeah.

4 **Q. Just comment about how that -- how that fits**
5 **into this idea of excluding the before benefits?**

6 A. Well, I think you're getting to something
7 slightly different.

8 You're saying, you know, if -- if you've -- if
9 you're doing a percentage on top of a pre-condition,
10 then the lift, you're assessing a special benefit on top
11 of the pre-condition.

12 **Q. Right. So you're valuing the pre-condition and**
13 **then you're assessing benefit on the pre-condition?**

14 A. Yeah. And that's an issue, but it's not as bad
15 as including the full value of the pre-condition in
16 there. You know, so --

17 **Q. What -- and can you figure out how or whether**
18 **he's done either?**

19 A. No. It's not transparent. You know, I mean,
20 he's -- in his deposition, he says he's considered it.
21 There's -- how do you consider that when there's no
22 adjustment for something that's not there, you know?

23 I mean, he makes an adjustment for the LID not
24 being there, but he doesn't make an adjustment for the
25 pre-condition not being there.

1 **Q. Okay. So I think we've -- is there anything you**
2 **want to add?**

3 A. No.

4 **Q. So can you just summarize your -- your opinions**
5 **based on review of the final benefit assessment --**

6 A. Yes. He's -- he -- in my opinion, he hasn't
7 properly teased out general benefits and deducted them.
8 He has not calculated the value increment associated --
9 associated with establishing a before condition.

10 He's not measured special benefits; he's
11 assigned them. His assignment is at -- in the 1 to
12 4 percent range is below the margin of error present in
13 the data and is, in fact, technically not measurable.

14 If you have a scientific experiment and you have
15 a standard of error greater than what you're trying to
16 measure, you can't measure it.

17 I think -- there's an inequitable treatment of
18 different types of property. And -- and I think the
19 property type itself, the complexity of downtown real
20 estate, you know, \$56 billion of property, I've -- at
21 the average King County home price, that's like 93 homes
22 in value -- is so vast that I think it's -- it's beyond
23 a reasonable ability to accurately sort of take all of
24 that and -- and attempt to assign special benefit to it
25 all. For a linear park, given the uphill nature of

1 downtown and, again, the complexity of the real estate.

2 You simply cannot measure this kind of real
3 estate, the value of this real estate, so incrementally,
4 as has been done in this study.

5 **Q. And so are you confident, on review of**
6 **Mr. Macaulay's appraisal, that he has demonstrated the**
7 **benefit to the parcels to be actual, physical, and**
8 **material and not merely speculative or conjectural?**

9 THE WITNESS: No.

10 MR. FILIPINI: Object as leading.

11 THE WITNESS: I feel that the --

12 HEARING EXAMINER VANCIL: Sustained.

13 THE WITNESS: Oh, sorry.

14 BY MR. LUTZ:

15 **Q. Well, could you comment on how that -- how**
16 **the -- his opinion relates to the legal standard?**

17 A. Well, I think it's speculation. I think
18 there's -- I think it's speculation. I think it's
19 imaginative, and I think it's remote because of the time
20 issue.

21 And so I don't -- it's not a measurement. I
22 think he's assuming that property values will increase,
23 but he's not actually measuring them. It's not -- it's
24 not a measurement study. Like I said, it's an
25 application of benefit.

1 **Q. All right.**

2 MR. LUTZ: Thank you. I have nothing
3 further.

4 HEARING EXAMINER VANCIL: All right. We
5 have Exhibits 3 to 16 that have not yet been admitted.

6 MR. LUTZ: I would move to admit them.

7 HEARING EXAMINER VANCIL: All right. 3 and
8 4 are admitted. They were -- they're already references
9 back to something that's already in the record.

10 Any objection to Exhibits 5 through 16?

11 MR. FILIPINI: I have -- I likely do. I was
12 taking notes as we went.

13 On -- may I voir dire the witness on a
14 couple of the exhibits?

15 HEARING EXAMINER VANCIL: Which ones?

16 MR. FILIPINI: Exhibit 5 and Exhibit 9.

17 HEARING EXAMINER VANCIL: Exhibit 9. Are
18 there objections to any of the other exhibits?

19 MR. FILIPINI: No.

20 HEARING EXAMINER VANCIL: All right. With
21 the exception of 5 and 9, Exhibits 6 to 16 are admitted.
22 Please proceed with 5 and 9.

23 BY MR. FILIPINI:

24 **Q. Mr. Gibbons, for Exhibit 5, this was the**
25 **Findings of Fact and Conclusions of Law at trial.**

1 **What was the nature of this -- let me ask, was**
2 **this a condemnation case?**

3 A. It was, yes.

4 **Q. Okay. And you were representing PS Business**
5 **Parks?**

6 A. Yes.

7 **Q. Did you render an opinion in that case?**

8 A. I did, yes.

9 **Q. And is your opinion contained -- what was your**
10 **opinion?**

11 A. In terms of dollars, I don't precisely recall.

12 **Q. Okay. And did -- was this your argument that**
13 **you pointed out to us -- Judge Downing, paragraph 11,**
14 **"Minimal impact of the station is primarily due to the**
15 **nature of the tenant profile of the business park, but**
16 **also due to it being nearly a decade away"?**

17 A. That was my testimony, yes.

18 MR. FILIPINI: Okay. On 5, we would oppose
19 admission on the grounds that its Findings of Fact and
20 Conclusions of Law at trial in a different sort of
21 matter doesn't have precedential value. It's not an
22 LID. Those are our arguments.

23 HEARING EXAMINER VANCIL: All right. I'll
24 overrule the objection and allow it. But allow that the
25 argument will go to weight of the document as it is. I

1 get it, it's not this one. But it is what it is.

2 MR. FILIPINI: And then on the --

3 HEARING EXAMINER VANCIL: 5 is admitted.

4 MR. FILIPINI: Sorry.

5 VOIR DIRE

6 BY MR. FILIPINI:

7 **Q. On Exhibit 9, if you could pull that one. And**
8 **it's -- has text and then a number of photos. And my**
9 **questions on 9 is where -- so before we go at it, I see**
10 **about 7 pages of text before we get to a separator sheet**
11 **that's entitled, "LID Before and After Images."**

12 **And my first question on Exhibit 9 is did you**
13 **put this together?**

14 A. No.

15 **Q. Do you know who did?**

16 A. The City of Seattle.

17 **Q. Okay. And so the -- where did you find this --**
18 **this document?**

19 A. I -- when I attended the hearings, I got -- we
20 would get various e-mails and updates, and I just had it
21 in my file.

22 **Q. And so the City of Seattle put together this**
23 **document in its entirety?**

24 A. Yes, I haven't -- yes.

25 **Q. Okay. And do you know approximately when it did**

1 **so?**

2 A. Well, I -- the -- the note that I had it saved
3 on my -- in my files was May of last year.

4 **Q. Okay. And then so when you -- is this the**
5 **entirety of the document that you accessed from the City**
6 **or did you excerpt it?**

7 A. I -- I'm not sure if I -- if it was excerpted or
8 I got e-mailed it. But that's -- this is the entirety
9 of the document I have.

10 **Q. And do the separator pages also come from the**
11 **City?**

12 A. Yes.

13 **Q. And you received this -- so this -- since it --**
14 **if I understood your testimony earlier, at the**
15 **pre-formation meetings, pre-LID formation, there -- at**
16 **some point, there were not no-LID alternative photos; is**
17 **that correct?**

18 A. That's correct, yeah.

19 **Q. Okay. But you received this document again --**
20 **you believe around May 2019?**

21 A. That's what I recall, yeah.

22 **Q. Okay. And it did contain the no-LID alternative**
23 **photos?**

24 A. Yeah. And then after I requested them, they
25 were put in. And then this document appeared.

1 **Q. And you -- so formation was on January of 2019.**
2 **So when you say you requested them, that was some time**
3 **in 2018?**

4 A. I believe so, yes. When I -- at the initial
5 hearings that were held before it was formed, yes.

6 MR. FILIPINI: Okay. No objection to
7 Exhibit 9.

8 HEARING EXAMINER VANCIL: All right.
9 Exhibit 9 is admitted. We'll break and return from
10 lunch at 1:30. That will be Mr. Gibbons on cross.

11 (A break was taken from 12:04 p.m. to 1:32 p.m.)

12 HEARING EXAMINER VANCIL: Return to the
13 record with objectors' witness, Anthony Gibbons, on
14 cross.

15 MR. FILIPINI: Thank you.

16 HEARING EXAMINER VANCIL: Mr. Filipini, I
17 may ask my questions first. I just have a few.

18 MR. FILIPINI: Sure.

19 HEARING EXAMINER VANCIL: Typically I wait,
20 because you may ask my questions. But in case you
21 don't. They may inform yours, so I'll jump in here.

22 MR. FILIPINI: Okay.

23 HEARING EXAMINER VANCIL: Mr. Gibbons, if --
24 can you summarize for me the -- the source of standards
25 that you are focusing on in your testimony?

1 What I mean by this is, you're indicating
2 that certain standards are not met. And I believe in
3 the exhibits that you've introduced, there's a -- there
4 are various sources for these standards.

5 THE WITNESS: Yeah.

6 HEARING EXAMINER VANCIL: Including case
7 law.

8 THE WITNESS: Right.

9 HEARING EXAMINER VANCIL: They could be
10 professional opinion.

11 THE WITNESS: Right.

12 HEARING EXAMINER VANCIL: There may be other
13 things. If you could fill in the blanks for me on that.

14 I would like to understand the source of that standard.
15 And to the best of your ability, make sure it's all
16 encompassing so I know where you're drawing those from.

17 THE WITNESS: Sure. Probably the main
18 standard is -- and I -- is Jim Eaton's book, Real Estate
19 and Litigation. He has an entire chapter on special
20 benefits and general benefits. And he cites case law
21 around the country, as well as in Washington, related to
22 the distinction between special and general benefits.

23 And then he gives some examples. And I had
24 one example from his book. But he has an entire chapter
25 on it. And I have that book, and, I mean, it's a good

1 read, in my world, you know, for a good distinction of
2 the difference between the two. That's one --

3 HEARING EXAMINER VANCIL: Let me -- let's
4 stay with that one for just a moment.

5 THE WITNESS: Yeah.

6 HEARING EXAMINER VANCIL: Help me
7 understand -- you had mentioned that it's in your world.
8 What type of expert he is and how is he viewed, how is
9 this viewed as a standard in your work by someone like
10 you. Is it something you reference, there's other
11 people out there, the -- the other world it's settled
12 and it talks about SEPA.

13 THE WITNESS: Yeah.

14 HEARING EXAMINER VANCIL: Is there somebody
15 that does everything? I just need some measure for
16 you -- what you -- what you see for this Mr. Eaton.

17 A. Yeah, Jim Eaton is an authority on this subject
18 matter. He's -- his book is called -- I think it's
19 Commercial Real Estate Appraisal and Litigation. And he
20 is also the author -- the federal government has their
21 own set of standards for acquiring property. And they
22 also have to be aware of when they create special
23 benefit or damages. And he is -- he was hired by the
24 Department of Justice to write what we call the yellow
25 book.

1 And this is a text that all -- virtually all
2 open space agencies use when they go out and acquire
3 property. It's a standard requirement. You know, we
4 want you to do a yellow book appraisal. That is to Jim
5 Eaton's standard, basically. So I would consider him an
6 authority on this particular -- in this particular
7 subject area, yeah.

8 HEARING EXAMINER VANCIL: And you were going
9 to identify other sources.

10 THE WITNESS: The other -- the other source
11 comes from the right of way manual, in terms of just --
12 I read it specifically for this work, in terms of the --

13 HEARING EXAMINER VANCIL: I'm sorry, the
14 right of way manual?

15 THE WITNESS: Yeah -- sorry, the LID manual.

16 HEARING EXAMINER VANCIL: LID manual. Okay.

17 THE WITNESS: Yeah.

18 HEARING EXAMINER VANCIL: I know what you
19 are talking about now. I wanted to make sure.

20 THE WITNESS: And those are really the two
21 sources that I have.

22 HEARING EXAMINER VANCIL: Okay.

23 THE WITNESS: Yeah.

24 HEARING EXAMINER VANCIL: And I'm glad you
25 mentioned the LID manual because I essentially wanted to

1 ask the same question I did about Mr. Eaton. Where does
2 that fall within your -- your standards? Is this
3 something you look to that's a guide -- you know, when I
4 read it, for example, it doesn't say "you shall," "you
5 must."

6 THE WITNESS: Right.

7 HEARING EXAMINER VANCIL: It's this is what
8 could be done. It may be done. It's best practice.

9 THE WITNESS: Right.

10 HEARING EXAMINER VANCIL: So in my world,
11 it's not a hard and soft measure. It may be in yours.
12 I don't know. So if you can give me some sense of how
13 you view it, it would be much appreciated.

14 THE WITNESS: Well, I think it's -- and the
15 same -- and Eaton's book, you know, his -- the one I
16 reference is, again, it's -- it's a -- it's an advisory
17 volume.

18 Now, his yellow book, book is actually a
19 standard that appraisers are required to adhere. And
20 that's -- it's called the Universal Appraisal Standards
21 For Federal Land Acquisitions, and you can get it off
22 the internet. And actually he has a lot of the same
23 discussion of special benefits in there, but --

24 HEARING EXAMINER VANCIL: And if I recall
25 correctly, from my own recollection, probably from

1 previous conversations with you and/or from testimony in
2 this hearing, that you're talking about the USPAP; is
3 that --

4 THE WITNESS: No, no. It's different.

5 HEARING EXAMINER VANCIL: Okay.

6 THE WITNESS: The federal government, of
7 course, has their own appraisal standards for --

8 HEARING EXAMINER VANCIL: Okay.

9 THE WITNESS: And -- and it's called -- it's
10 a similar acronym. It's the Uniform Appraisal Standards
11 For Federal Land Acquisitions. So "UASFLA."

12 And -- but it's -- the shortening of it is
13 called the yellow book. And it's simply because the
14 cover of it used to be yellow. And still is yellow for
15 that reason.

16 But that is a -- if you do work for -- we do
17 a lot of work for King County open space, we're required
18 to follow that standard.

19 It's actually, you know, you shall follow
20 USPAP. You -- you're required by law in this state to
21 follow USPAP. The -- following the yellow book standard
22 is then an additional layering, even if we're not doing
23 federal land acquisitions, typically agencies require it
24 because the Washington Recreational Commission, the RCO,
25 requires that appraisers follow yellow book. So then

1 we're -- and that was authored, again, by Jim Eaton, who
2 wrote the litigation one.

3 HEARING EXAMINER VANCIL: Okay. And you
4 were talking about the LID manual.

5 THE WITNESS: So -- yeah. So going to the
6 LID manual. That's -- again, that's an advisory volume
7 produced for somebody that is trying to interpret an LID
8 appraisal and make sure they have the correct elements
9 in there.

10 So I think it's a useful guide. But you're
11 right. I don't -- I don't think that's -- I don't
12 consider that a binding authoritative text, other than
13 when it indicates something like, you need to
14 distinguish between special and general benefits. That
15 obviously comes from case law.

16 So I think they actually -- in the LID
17 manual, they actually reference some cases where this
18 issue has come up. And particularly, again, we've
19 referenced as special and general benefits. Because
20 that is an issue that's being, obviously, litigated
21 and -- and there are being opinions written about the --
22 the difference between the two and why we must
23 distinguish between the two.

24 HEARING EXAMINER VANCIL: Thank you. One
25 other question I had for you was, in Exhibit 9, there

1 was a -- there were a series of images or photos that
2 were utilized.

3 THE WITNESS: That starts with LID before
4 condition?

5 HEARING EXAMINER VANCIL: Correct.

6 THE WITNESS: Yeah, yeah.

7 HEARING EXAMINER VANCIL: And I guess my
8 question for you is, what is your understanding -- I
9 understood that the City was presenting this at a
10 waterfront LID public gathering.

11 THE WITNESS: Yeah.

12 HEARING EXAMINER VANCIL: To what degree is
13 your understanding that this information in here,
14 specifically the images as you've described them, is
15 what was relied on by Mr. Macaulay?

16 And my question, to frame it, is: It's my
17 understanding you were saying this is the information he
18 had or something similar to this, and is that the case?
19 Or allow me to clarify what you're -- what you were
20 trying to convey.

21 THE WITNESS: Yeah. Prior to the production
22 of this, there were no images produced of what the City
23 was -- or what Mr. Macaulay was hypothesizing would be
24 in place in the before condition. There were no images
25 of that. It was just a street-scape project that would

1 adhere to certain SDOT and WSDOT standards.

2 And these images -- and so when the
3 preliminary special benefits study was produced,
4 Mr. Macaulay had not viewed any images of the property
5 as it was in the condition he was appraising it, in the
6 before case.

7 And I -- I felt that was a serious lapse.
8 Because how could you -- it might be very nice down
9 there anyway, was basically the thought I had. You
10 know, they're going to -- they're going to build
11 streets. They're going to put street landscaping in.
12 They're going to put the parking back. And a lot of
13 those improvements would add value in the very same way
14 that the LID was purportedly going to add value.

15 And so I thought how could any appraiser
16 value an aesthetic if they don't have a picture or a
17 photograph or the actual condition to view.

18 And -- and then -- then eventually the City
19 started producing some images, and then obviously in the
20 final study we have the addenda, which produces, again,
21 a set of images of the property before and after.

22 HEARING EXAMINER VANCIL: Okay.

23 THE WITNESS: So it was finally produced.

24 HEARING EXAMINER VANCIL: Thank you.

25 THE WITNESS: But it wasn't --

1 HEARING EXAMINER VANCIL: Are these the same
2 images that were in the addenda or different?

3 THE WITNESS: No, these are actually a
4 little bit different. They don't include -- they
5 certainly -- the other thing I objected to was the
6 inclusion of the images with the viaduct. And -- as it
7 suggested the City's project was replacing -- a part of
8 the City's project was a beautification of the landscape
9 from viaduct to Waterfront Boulevard, when, in fact,
10 that wasn't the case. The viaduct -- taking down the
11 viaduct and replacing it with streets was a different
12 project.

13 HEARING EXAMINER VANCIL: All right. Thank
14 you for clarifying that, Mr. Gibbons.

15 THE WITNESS: Okay.

16 HEARING EXAMINER VANCIL: City, cross.

17 MR. FILIPINI: Thank you.

18 CROSS-EXAMINATION

19 BY MR. FILIPINI:

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

21 **A. Good afternoon.**

22 **Q. So just a question or two on the Hearing**
23 **Examiner's questions.**

24 **If I understood correctly, Jim Eaton's book that**
25 **you referenced in your testimony earlier today, that's**

1 **an advisory volume?**

2 A. Yeah. There's no -- there's no requirement that
3 you adhere to it, other than when, of course, it's in
4 compliance with the law or USPAP or standard appraisal
5 practice. Then, of course, it would be encompassed in
6 that.

7 **Q. Okay. Is it -- I want to make sure that I**
8 **understood your background.**

9 MR. FILIPINI: And, of course, before I get
10 into that, I would ask the Hearing Examiner if -- we'd
11 like to incorporate by reference Ms. Thompson's prior
12 cross-examination and the Hearing Examiner's prior
13 questions in -- of Mr. Gibbons in cases Nos. 336, 337,
14 339, 340 and 342.

15 HEARING EXAMINER VANCIL: And so
16 incorporated.

17 MR. FILIPINI: Thank you.

18 BY MR. FILIPINI:

19 **Q. In having reviewed that prior testimony and what**
20 **you said today --**

21 **HEARING EXAMINER VANCIL: And let me add --**
22 **this presents a new issue for me, I guess.**

23 **So the standard for objectors is that**
24 **they -- as you know, they have to put their own case on.**
25 **They have to challenge the special assessment and they**

1 have the duty. And so the approach that we've been
2 doing in the hearing is that, just to organize this
3 matter by case number, under your case number, exhibits
4 are coming in. Whatever cross reference testimony or
5 testimony you present is directed at that matter. And
6 because of that burden and a need to meet that, it isn't
7 fair in this situation simply to say, somebody else put
8 a case on and I believe there's case law that supports
9 this -- another objector puts a case on, if they win, I
10 win. I don't believe that that's sustainable. So
11 that's how we organized the materials coming in.

12 The City's in a different position. It's
13 got to respond to all of these objections. And so I
14 don't -- this is a consolidated hearing overall, and so
15 I'm not sure that the City needs to, by reference, bring
16 things in under each case number, if you see what I
17 mean.

18 You may be -- I'm a little challenged by
19 that. But the City has a -- has a different duty. And
20 so to challenge -- I -- I understand they need to bring
21 facts in from another matter that's been
22 compartmentalized as to facts for -- on the objectors'
23 side for one purpose.

24 But I'm expecting the City, for example, to
25 have two days to be responding and, rather than breaking

1 **out each of these 400-plus cases, that they're going to**
2 **be responding in kind to the issues that have been**
3 **raised. I may be wrong how you plan to do it. I did --**
4 **I have asked that, to the degree possible, either by a**
5 **declaration or in that, that you respond to fact issues**
6 **that are raised.**

7 **But for something like this, where we're**
8 **talking about appraisals and standards, et cetera, I'm**
9 **not sure that it's necessary to adopt by reference.**

10 **So --**

11 MR. FILIPINI: Okay.

12 HEARING EXAMINER VANCIL: I want to -- the
13 fact that you have, I think, it makes it neat and tidy.
14 We know that you've done that for this case, there's no
15 question about that. If the City chooses to proceed
16 that way, I welcome it. But I -- I just want to note
17 for the record that I'm not -- if the City doesn't do
18 that in some case, that they've waived the right to make
19 their case against all of these arguments that are
20 coming in.

21 MR. FILIPINI: Understood. Thank you.

22 HEARING EXAMINER VANCIL: Mr. Lutz.

23 MR. LUTZ: I have a -- just a follow on
24 procedural question.

25 HEARING EXAMINER VANCIL: Yes.

1 MR. LUTZ: Which -- and it's -- candidly,
2 partly I'm not prepared.

3 But I'm not prepared to understand what
4 questions she asked Mr. Gibbons in a different
5 proceeding so that I actually know what the scope of
6 that cross-examination consisted of. I'm just wondering
7 if you have a suggestion for how we would, for example,
8 do redirect on questions somebody asked him in a
9 different proceeding.

10 HEARING EXAMINER VANCIL: Right.

11 MR. FILIPINI: And it may be we'll resolve
12 that by saying the only time, really, I want to
13 incorporate by reference, the only time I have truly one
14 or two questions, just of his general background.
15 Otherwise, all of my questions would flow from his
16 testimony today.

17 MR. LUTZ: Okay. And on that, we have no
18 objection. And it would be the same as -- as -- and I
19 can ask you later.

20 THE WITNESS: Okay.

21 HEARING EXAMINER VANCIL: Thank you for
22 that, Counsel. I think that does clarify what we're
23 doing here today. And my comments mostly note sort of
24 an open door for the City to hop fences between cases to
25 some degree. And I -- I just have to address that as it

1 comes up. Because they have a different standard. But
2 I appreciate you working through it in such detail and
3 clarity in this matter.

4 MR. LUTZ: Thank you.

5 HEARING EXAMINER VANCIL: Thank you for the
6 assistance.

7 BY MR. FILIPINI:

8 **Q. Thank you. Mr. Gibbons, am I correct that most**
9 **of your work with special benefit issues has been in a**
10 **condemnation setting?**

11 A. It has, yes.

12 **Q. And is -- is it your testimony that -- that**
13 **special benefits and general benefits concepts are the**
14 **same, regardless of the purposes -- purpose of the**
15 **analysis?**

16 A. Yes. The -- the general -- the method and
17 the -- the general understanding of what is special and
18 general is the same.

19 **Q. When you say "method" there, is that -- what do**
20 **you mean by the method is the same?**

21 A. As to how you might go about addressing them or
22 measuring them, or finding them.

23 **Q. Are you familiar with the fact that Washington's**
24 **LID statute allows for the formation of a LID before the**
25 **improvements that it's financing are going to be built?**

1 A. Yeah, that would almost be a requirement, right?

2 So I mean, they can't build them if they don't have the
3 money.

4 **Q. Right.**

5 A. Or the bonding.

6 **Q. Part -- part of what I understood the objectors**
7 **in today's cases and others to be saying is that, this**
8 **is unusual in that the -- an unusual LID, in that the**
9 **improvements are not yet built. So it's not a situation**
10 **where we built the improvements and then passed the hat;**
11 **it's reversed.**

12 A. Well, actually, no, that's not -- that's not the
13 objection. The objection is -- there are two issues.
14 One is the before condition that it's being compared to
15 is not yet built. That is unusual.

16 Usually in an LID, you have a pre-condition,
17 which is in place, and you go out and measure it. And
18 then you have a condition with the LID in place. So
19 that part's unusual.

20 But the aspect that is unusual in this case is
21 the time frame. Five years is -- five years and the
22 type of improvement is a long period of time.

23 It's not like we're putting a sewer in the
24 ground and it's going to be a six-month or a 12-month
25 project. This is a five-year project. And it involves

1 working over water, which is a highly regulatory
2 environment. And -- and there's millions of dollars
3 involved, and it's also an aesthetic.

4 So it's -- there's, you know, the type of
5 plants, the diameter of the trees, these are things that
6 probably are subject to change depending on, you know,
7 the time of year they get put in and so forth.

8 So I think those are very different aspects of
9 this. But it's mainly the time frame of five years.

10 **Q. And so do you agree that in a situation where**
11 **the municipality has not yet built the improvement -- so**
12 **the after case --**

13 A. Yeah.

14 **Q. -- that the municipality would have to make**
15 **certain assumptions about -- in order to value the**
16 **improvements about what they will be; correct?**

17 A. It has to make an assumption about what they --
18 well, it has to make a forecast of what they will be.

19 You know, they -- they're going plan for them.
20 They're not going to assume what's there. They're going
21 to plan it and budget it, and then they also have to
22 project when it's actually going to be in place.

23 **Q. Okay. If I understand your testimony just now**
24 **and also on direct, you take issue with the time frame**
25 **here between the -- the before scenario?**

1 A. Yeah.

2 **Q. Before-LID scenario and the after, and that**
3 **2024; is that correct?**

4 A. Yes.

5 **Q. And it -- did I hear you correct earlier to say**
6 **that beyond one year, if that after scenario is more**
7 **than one year out, that it can't be done?**

8 A. No. I've always said it can be done. It hasn't
9 been done. You can have it -- I think a reasonable
10 shortcut for an appraiser is when it is within the --
11 the improvements will be in place in a relatively short
12 time. Curbs, gutters, sewer, they're going to be in
13 place in a period of, like I said, six months or a year.
14 Then I think there's some license given to the appraiser
15 to do a before and after study that is in the same
16 general time frame.

17 Because the time frame -- for instance if you
18 were going to build a project, you likely couldn't get
19 the permits before the sewer is in place anyway. So I
20 think there's a reasonable license if it's a relatively
21 short period of time.

22 In the case of an improvement that's not going
23 to be in place for five years, you can have huge changes
24 in the environment. Buildings can be built. In fact,
25 they will be built between now and when the -- the

1 boulevard is complete. That changes the landscape,
2 creates view blockages, creates competition, essentially
3 creates a different environment in which the
4 improvements are delivered.

5 I'm not saying it can't be done. I'm just
6 saying it wasn't done here. There should have been a
7 discount provided to -- for the special benefit for the
8 time and the risk associated with the delivery of those
9 improvements.

10 **Q. And let me ask -- let me first make sure I have**
11 **that. Should have been a discount provided for time and**
12 **risk related to delivery of the special improvements?**

13 A. Exactly.

14 **Q. Okay.**

15 **So this is a question I'm going to ask you a lot**
16 **in my cross-examination today.**

17 **How do you know that a -- Mr. Macaulay, or ABS**
18 **valuation did not provide a discount in its analysis for**
19 **the time and risk related to the delivery of**
20 **improvements?**

21 A. Because in his report he indicates that he's
22 assuming it's in place, and in his deposition he
23 indicated -- sorry, not assuming, hypothesizing it's in
24 place.

25 **Q. And so, as a result, you believe he did not**

1 **discount, for example, his after values at all to take**
2 **into account the possibility of -- or the effect of time**
3 **and risk on the delivery of the improvements?**

4 A. Yeah, not at all.

5 **Q. And similarly -- at least in my mind, similar**
6 **topic, Mr. Lutz asked you about discounting the**
7 **up-to-present value of future benefits. And I**
8 **believe -- let me confirm. Did you testify that**
9 **Mr. Macaulay did not discount the after condition in any**
10 **way?**

11 A. Yeah. He has not appraised the after condition
12 as it was on October 1st of 2019. He's appraised it
13 though the park was complete on October 1st of 2019.

14 **Q. So you're saying he has not appraised the**
15 **existing condition on October 1?**

16 A. Well, we all know the park is not in place. And
17 he has provided before and after values as of
18 October 1st, 2019.

19 So he hasn't actually appraised the condition
20 that the property is in, in either case. He's --

21 **Q. Because he's relying on hypotheticals?**

22 A. Yeah, he's relying on hypotheticals, and
23 assuming it's -- hypothesizing that it is there, and
24 then measuring the benefit as it would be if it was
25 there.

1 **Q. But do you know if, in the calculation of any**
2 **particular parcel's value before and after, do you know**
3 **if he took again, the risk associated with time or risk**
4 **of special damages, as you called, it into account?**

5 A. He did not.

6 **Q. And, again, I'm trying to understand -- I**
7 **appreciate the clarity of your answer, but I am trying**
8 **to understand what is the basis for your opinion, and I**
9 **take it that it is the existence of the hypotheticals?**

10 A. Right. If -- if he had done it like it should
11 have been done, he wouldn't have made a hypothetical.
12 But his hypothetical allows him to leapfrog the distance
13 in time and the condition that the property will be in
14 for the next five years before it's realized.

15 **Q. And if I'm -- to understand your testimony from**
16 **a few minutes earlier, what -- so what's -- what's the**
17 **difference between assuming a hypothetical in this**
18 **scenario, at least with respect to the after condition,**
19 **and another LID where a municipality has not yet built**
20 **the -- let me rephrase that.**

21 **Doesn't the after condition for the construction**
22 **of LID improvements, the valuation of those, always**
23 **assume a hypothetical?**

24 A. Like I said, it's -- it's a reasonable -- it
25 doesn't always.

1 When we do -- when we do a special benefit
2 assessment, we make sure we know when it's going to be
3 delivered and -- and the time frame it's going to take
4 to do that. So, no, it doesn't always.

5 But like I said, there -- there is a recognition
6 of a small project which is going to be completed in
7 short order that you might, under those circumstances,
8 say, you know, these are just street improvements.
9 They're not going to take very long to do, and I'm going
10 to look at it today with or without the improvements,
11 because it's -- you know, it's going to be like a
12 six-month project or a 12-month project. It's not --
13 it's within a reasonable period of time.

14 And if you were planning on doing something with
15 that property, like -- sewer is a great -- great
16 example. If sewer, brought to a property, allowed that
17 property to be subdivided and become a plat, the time
18 frame for putting a plat in place is, you know, like
19 18 months to two years versus getting the sewer there.
20 As long as the sewer is in time for the plat, then --
21 then it doesn't really matter that there's a short delay
22 in getting the sewer there. So you would -- you could
23 then book that value, recognizing it's going to come.

24 But in this particular case, we're talking about
25 five years. And -- and we're talking about an

1 environment that will see -- that -- where buildings
2 will be built within that time frame.

3 You know, so somebody can get permits and build
4 a building before the City's got this project complete.
5 So a complete change of circumstances can happen.
6 Hotels will see new competition, for instance, between
7 then and now, that could totally change the manner in
8 which the special benefit is received, if it is
9 received.

10 **Q. And let me make sure I have your testimony**
11 **clear. So how could -- well, let me state. Could**
12 **Mr. Macaulay have done this in a way that would meet the**
13 **standard you laid out? In other words, to account for**
14 **the future discount provided for time and risk related**
15 **to the delivery of the improvements?**

16 A. Absolutely. It's something that appraisers do
17 all the time. You might be appraising a property and
18 know that there's going to be a re-zone in a couple of
19 years. And you look forward to that and see, you know,
20 when -- what's the probability of that happening?
21 What's the probability of it not happening?

22 So -- so absolutely you would -- you could make
23 a forecast of activities.

24 Same way if you're appraising a condominium and
25 a tower is going to be built in front of it that's going

1 to block the view. How long is -- you going to enjoy
2 your view and when is it going to get blocked? So these
3 are forecasts that appraisers can make and they're used
4 to making.

5 **Q. And if it turned out that Mr. Macaulay and his**
6 **team did make such a forecast here, would that undermine**
7 **the basis of your opinion on this point?**

8 A. Well, I've read his report and I've read his
9 deposition. So you're asking me something which is --
10 is not the case.

11 **Q. Okay. But, again, if it turned out that ABS**
12 **valuation did take into account the -- the forecast that**
13 **you mentioned, would it change your view?**

14 A. In all fairness to me, your question answers
15 itself.

16 **Q. Okay. So you -- fair to say that your -- the**
17 **opinion you've delivered is -- rests on the statements**
18 **you've provided today?**

19 A. It's based on the special benefits study and
20 it's based on my reading of his deposition.

21 **Q. Okay. So I would characterize as -- as an**
22 **important point that you've made in your prior testimony**
23 **and today, is that the appraiser, Mr. Macaulay, has not**
24 **measured the difference between the current state of**
25 **affairs for the properties in question and the**

1 **before-LID scenario; is that correct?**

2 A. That is correct, yeah.

3 **Q. Okay. And I'd like to understand why you say**
4 **that. I want to get at sort of what are the**
5 **underpinnings of your understanding that Mr. Macaulay**
6 **has not measured the difference between the current**
7 **scenario and the before-LID scenario?**

8 A. Right. Because we don't have the before-LID
9 scenario in front of us, it means that every sale of any
10 property downtown, any sale of a condominium, a site
11 down there doesn't reflect the before-LID condition.
12 It's not there. Can't reflect it.

13 And so, if you're going to take current sales
14 activity and create a model of a before valuation that
15 actually assumes a different condition, for all
16 transparency, you would need to make the adjustment.

17 Well, so all sales -- and -- and I think this is
18 my biggest complaint about it, is that Mr. Macaulay is
19 very comfortable making the adjustment from the before
20 LID to the after LID in very incremental manner, but
21 where is the adjustment from the current condition to
22 the before LID?

23 It's not provided. There's no analysis of it.
24 There's no discussion about the fact that -- if we took
25 those pictures that I presented this morning and said,

1 if we didn't have this condition and we had a completed
2 Alaskan Boulevard with street landscaping and
3 sidewalks -- you know, clearly that's an improvement
4 that's very similar to the LID -- what lift would it
5 have provided anyway? And I think that's a big hole in
6 his study.

7 **Q. And so your evidence that he didn't take into**
8 **account -- or didn't measure the difference between**
9 **current and before -- please add if I have this wrong or**
10 **correct me. But it's not provided -- you didn't see it**
11 **provided in the report, you didn't see any analysis on**
12 **that point or any discussion in the report?**

13 A. That's right. There's no measurement of it.
14 He -- he presents a series of values based on current
15 sales activity, and then merely says that's
16 representative of the before.

17 There's no understanding of how that takes into
18 account this different condition.

19 **Q. And isn't it possible that in reaching his**
20 **before values on a case-by-case basis in more than 6,000**
21 **parcels to be assessed, that he took into account the**
22 **increase in value from current to before?**

23 A. I don't -- his studies should reflect that if he
24 did. It's a step that is assumed, but it's not apparent
25 in his study.

1 **Q. And -- and let me ask, how should his study**
2 **reflect the analysis he underwent to get from current**
3 **property value to before LID property value?**

4 A. Well, I think that here's a great example. The
5 park has, like, four-inch diameter trees, and the before
6 condition will have like two-inch diameter trees.

7 So where -- where in the analysis is there an
8 understanding of what that difference is?

9 And I think this -- in my opinion, this has been
10 a problem right from the get-go, going right back to
11 those pictures that I showed you, where there's been
12 this sort of rolling up of the current condition into
13 the -- the finished LID without consideration of what
14 kind of lift would occur with the street improvements
15 the City's required to put in there anyway.

16 And I think if an appraiser is using current
17 sales and current sales activity to develop values for
18 all of downtown, how can you get to that before
19 condition if you don't incrementally account for that
20 lift?

21 **Q. Right. So my questions are -- I'm trying to get**
22 **all -- all of your reasons why you believe that**
23 **Mr. Macaulay hasn't accounted for that lift.**

24 And I understand that your testimony is -- you
25 **believe the study would have more on the topic? Would**

1 **have measurements, would have --**

2 A. Yes.

3 **Q. -- analysis?**

4 A. Yeah.

5 **Q. And do you believe that his failure to -- and**
6 **I'm sorry, I'm going to say, alleged failure -- to put**
7 **in his study this level of detail is a -- a failure to**
8 **meet professional appraisal standards?**

9 A. Yeah, because -- you're -- you're citing a
10 hypothetical condition, and, under standard appraisal
11 standards, you should represent what difference that
12 makes to you than the current condition.

13 You know, that's a -- that's a very -- it's like
14 you're -- you're appraising a property subject to --
15 you're hypothesizing a building is built when it isn't.
16 You know, that creates a requirement on the appraiser to
17 remind, you know, what does that hypothetical do to the
18 value? How does that hypothetical change the value?

19 And there is virtually no discussion about it in
20 the report.

21 And I think I'm being particularly hard on him
22 here, because the before condition is so eerily similar
23 to the after condition, when you look at the pictures
24 and aesthetics and, you know, where -- where he's
25 valuing an aesthetic here. And so I think that places

1 additional burden on him to explain why, you know, a
2 four-inch diameter tree creates more value for a hotel
3 eight blocks up the street than -- than does a two-inch
4 diameter tree.

5 **Q. So coming back to -- I asked you for the**
6 **evidence that you have that Mr. Macaulay did not**
7 **independently -- or I'm sorry, did not value the**
8 **difference between current and before. I understand**
9 **your answer to be you would expect there to be more in**
10 **the report.**

11 **What if he did? What if, in fact, Mr. Macaulay**
12 **and his team, in doing the 6,000 plus assessments here,**
13 **did make adjustments from current market value to before**
14 **LID value, would that affect your opinion?**

15 A. Well, I think those should be available for
16 review in conjunction with the cost of putting in those
17 street improvements so that -- so that one could make a
18 judgment call as to whether they have been properly
19 dealt with.

20 **Q. And so let me follow up on that. What is the --**
21 **why would we need the cost information?**

22 A. Well, because the -- the -- there's a test in
23 the -- the special benefits study about, you know, costs
24 not exceeding -- sorry, the special benefit value not
25 exceeding the cost in place.

1 I think if -- if the appraiser is going to note
2 the cost investment in improvements and have an
3 understanding of just the magnitude of the type of
4 investment being made, I think that's important
5 information for the before condition.

6 What are these streets going to -- what are
7 these streets going to cost that they're going to put
8 down there but for the LID? What investment is going to
9 be made in landscaping?

10 I think those are important elements that an
11 appraiser would consider in evaluating if that kind of
12 investment changed the value of property adjacent or --
13 or within blocks.

14 **Q. Okay. But at -- at the end of the day, the only**
15 **requirement in the LID world is that the cost can't**
16 **exceed the special benefit value provided; correct?**

17 A. That's true, yeah.

18 **Q. And are you aware that Mr. Macaulay's team is**
19 **evaluating the LID -- the six improvements as a single**
20 **entity, as opposed to assessing the special benefit**
21 **provided by each individuals --**

22 A. I missed something. The six improvements, what
23 did you say?

24 **Q. Yes. Yeah, I'll rephrase.**

25 **So as I understand it, Mr. Macaulay and his team**

1 **have approached -- and he testified too, at his**
2 **deposition, have approached the six waterfront LID**
3 **improvements --**

4 A. Okay.

5 **Q. -- as a single local improvement district.**

6 A. Right.

7 **Q. As opposed to saying 72 percent of the value is**
8 **provided by Overlook Walk, 33 percent by -- are you**
9 **aware of that before today?**

10 A. Yeah. Very much. Yeah.

11 **Q. Okay. And what's your -- and the reason I ask**
12 **that, Mr. Gibbons, is -- you know, it seems to me you're**
13 **advocating coming from a different approach. For**
14 **instance, valuing the cost of individual improvements.**

15 **So let me just step back and say what is your**
16 **view of Mr. Macaulay's approach of valuing the six**
17 **improvements as a single local improvement district?**

18 A. Yeah, I think that's -- I don't have a problem
19 with him sort of, at the end of the day, kind of adding
20 it all up.

21 But, you know, if you -- if you take an example,
22 like, you know, a property at the end of King Street --
23 and I think King Street is the one that's going to get
24 two new street trees -- you start to -- I think you
25 start to run into the issue of the benefit cannot exceed

1 the cost.

2 And, you know, if there's a massive -- there's a
3 massive cost invested in Overlook Walk, for instance,
4 and yet the benefits that are supposedly accrued to a
5 particular property have nothing to do with Overlook
6 Walk because they're a long way away. Or because
7 they're right at the other end of the waterfront or
8 whatever.

9 Then I think you start to run into a problem of
10 is the -- how the LID is conceived and how you're
11 measuring benefit from it.

12 And think that's -- that's an issue it. It
13 seems inconceivable to me that you wouldn't consider the
14 localized investment of cost when you're considering the
15 localized increase in, you know, a peculiar rise in the
16 value of property or a special rise in the value of a
17 property.

18 **Q. And related, are you aware of other LIDs**
19 **where -- that had contained multiple improvements but**
20 **the municipality treated it at a single LID?**

21 A. Well, yeah. A typical street LID where you've
22 got -- where you've got a combination of wider streets,
23 sidewalks and landscaping, that would be sort of a
24 combination.

25 But, nevertheless, the benefit for a particular

1 property would be related to what's, you know -- it's
2 directly going to -- how it's directly going to
3 specially benefit from the improvement.

4 **Q. And that was my next question. So in your**
5 **experience, the -- in calculating the special benefit of**
6 **a LID that contains multiple improvements, the appraiser**
7 **should measure value, special benefit vis-a-vis those --**
8 **relation to those individual improvements?**

9 A. Sure. Take for example, a sewer where you had a
10 connection that was some distance away from your
11 property. Just so happened you're -- you're on the
12 street but you're a little bit set back so you have a
13 longer hook up to the sewer line than another property.
14 You would be -- you would have a different kind of
15 benefit assessment. And that would obviously relate to
16 your special location with respect to that improvement.

17 **Q. No, I understand that. But in a LID where**
18 **you're combining multiple improvements, are you aware of**
19 **another municipality taking the approach Seattle did**
20 **here?**

21 A. I actually don't know of a situation where
22 somebody has tried to put an LID on a downtown. No.
23 I'm not aware of that.

24 **Q. And are you aware of a situation where a**
25 **municipality has measured the special benefit of an LID**

1 **to a particular parcel based on all of the improvements**
2 **as opposed to based on the distance between a parcel and**
3 **a particular?**

4 A. Well, I -- to me that's why it's straying into a
5 general benefit analysis.

6 If there's -- if there's nothing specific about
7 your particular orientation to a property, then it seems
8 like are you assessing special benefit or not.

9 But -- but to answer your question, I don't
10 know.

11 **Q. In arriving at -- if you were doing a special**
12 **benefit analysis, in arriving at the after value for a**
13 **particular parcel, if construction was anticipated on**
14 **that parcel, if they were going to build a property, a**
15 **hotel or a business, how would you take into account the**
16 **cost of construction?**

17 A. Well, in my opinion, the -- the benefits should
18 be tied to land value. It shouldn't be tied to an
19 improvement value.

20 It should be tied to the -- the highest and best
21 use of the property and it should be tied to the manner
22 in which that parcel can accommodate an improvement that
23 could take advantage of whatever benefit you think is
24 present.

25 So -- well, ask me a follow-up.

1 **Q. Right. And so -- it's also true that in a LID**
2 **in Washington, the appraiser has to figure out the**
3 **market value of the -- of the parcel; correct?**

4 A. Of course, yeah.

5 **Q. And isn't it true that in assessing, appraising**
6 **the value of a parcel that would require a significant**
7 **construction, construction of a building in order to**
8 **receive an income stream, a market participant would**
9 **take that into account?**

10 A. Yeah, but, I mean, if you break down the -- if
11 you break down the property to be an improvement, bricks
12 and mortar, that you're going to put on the property,
13 the lift from value comes in the situation of the
14 property which is -- is in land value.

15 And when you look at examples of side-by-side
16 examples, that's where -- that's where this has gone
17 wrong, is that he's -- he's basically assigned two or
18 three percent to all these properties, but two or three
19 percent assigned to land, which a high-rise real estate
20 would be usually worth ten percent or less of the total
21 value of property. And then he's assigned it to a
22 high-rise, you're clearly going to get an inequitable
23 presentation.

24 Look at -- look at his difference between the
25 2&U building and 1201 in the preliminary study. 2&U was

1 a vacant parcel. 1201's a completed building.

2 Completely different assessments.

3 Well, by time the final study comes along, 2&U
4 is far enough along that he assesses the improvement and
5 you see what dramatic change in the assessment, did that
6 dramatic change occur because of the -- the LID project?

7 No, it occurred because he's not properly
8 assessing the component in his analysis.

9 He needs to be looking at the highest and best
10 use of the property and how that component is lifted in
11 value.

12 **Q. So as -- as an appraiser, would -- is it your**
13 **testimony that someone looking to buy a vacant lot in**
14 **the city of Seattle in order to do a commercial**
15 **construction on it, would not take into account the cost**
16 **of the said construction?**

17 A. No, let -- let me give you an example.

18 If you had a property with a subdivision and
19 everybody's on septic systems and you have a piece of
20 raw land, and you decide your sewer is going to add two
21 or three percent. And you take all the homes and the
22 land and add two or three percent to it, and you take
23 this land parcel and add two or three percent to it,
24 then you find out the land parcel can actually
25 accommodate a density of three times the property that

1 wants septic. You have inadvertently missed the
2 differentiation.

3 And then the property that gets assessed, its
4 land has -- and I gave the example of the
5 Wilson (phonetic) parking lot which is going to be built
6 in front of the Watermark Tower. That property's going
7 to have a lower per unit assessment than properties
8 directly adjacent, just because, at this particular
9 point in time, it's only land. But all the fortunes of
10 that project are encompassed in that land parcel.

11 **Q. Right. But I'm coming at it from the other side**
12 **of the requirement, in the case law that you value the**
13 **property as of the valuation date, at market value and**
14 **what impact would it have on market value.**

15 **So my question is, if you're buying a vacant lot**
16 **in Downtown Seattle to do a construction project on it,**
17 **isn't -- isn't your pricing of that project going to**
18 **take into account the fact you've got -- you've got to**
19 **build the very property that's going to generate the**
20 **income stream you're hoping for?**

21 A. Of course. But I mean, this is why it's
22 confusing in this particular study. Mr. Macaulay has
23 just simply slathered two or three percent over all
24 these different properties as -- you know, but hear me
25 out here, you know, one -- some have improvements on and

1 some are raw land.

2 The raw land can actually take much better
3 advantage of -- if there is a benefit, of a benefit,
4 because it can create improvements on it that are --
5 proximity may be related to the benefit.

6 The existing building with superstructure
7 already on it is -- should be assessed at a completely
8 different analysis.

9 **Q. Now, what if Mr. Macaulay -- well, let me ask.**
10 **How do you know that Mr. Macaulay didn't take into**
11 **account the highest and best use of the vacant piece of**
12 **land?**

13 A. Because look -- compare his -- his assessment on
14 the, you know, the Courtyard Marriott compared to the
15 new Yesler Hotel that's going to be right down on
16 Alaskan Way. They're different assessments, but the new
17 Yesler Hotel is going to be built before the waterfront
18 project is built. Why -- why is the assessment per room
19 on that property different from an existing hotel that's
20 eight blocks further away?

21 **Q. And if Mr. Macaulay were to answer, because of**
22 **the construction costs required to put up the new hotel,**
23 **what is your response to that?**

24 A. He would be completely wrong.

25 The -- the construction cost is already in place

1 for the Marriott. It's coming for the Yesler --

2 **Q. It's coming. Right.**

3 A. Yeah. It's coming for the Yesler Hotel. If he
4 looked at the higher value of a site for a hotel because
5 of proximity to something he thinks is valuable, then
6 it's addressed as a location factor.

7 The bricks and mortar, windows, finishes in the
8 hotel, that kind of thing, doesn't change because a park
9 improvement is coming. It's a location factor.

10 So location and proximity relate to land. I
11 mean, you --

12 **Q. You know -- right.**

13 **HEARING EXAMINER VANCIL: Gentlemen, can**
14 **I -- I appreciate the conversational level that**
15 **you've achieved. And it's an erudite conversation. But**
16 **if I could ask you to step back in your corners and just**
17 **follow the format of responding only to questions, and**
18 **make sure that you're not interrupting the witness when**
19 **he's responding.**

20 MR. FILIPINI: Will do.

21 HEARING EXAMINER VANCIL: Thank you.

22 BY MR. FILIPINI:

23 **Q. So I -- to summarize this, I take it you're**
24 **aware that Mr. Macaulay disagrees that the lift goes**
25 **only into the land value?**

1 A. Well, I think, then, if that is true, you would
2 have to ask him why -- why is the assessment for a hotel
3 by 2024, when the park is built, why is one hotel have a
4 disproportionally higher assessment compared to another
5 hotel. And I -- I don't think he can have an answer for
6 that.

7 **Q. And if his answer were -- was to take into**
8 **account the construction cost that would be necessary to**
9 **get to the current -- the hotel that's already built,**
10 **what's your response to that?**

11 A. My response is, the construction's going to be
12 in place before the park is.

13 **Q. Okay. And so for the example -- you've given us**
14 **a handful of examples, these are -- these are a couple**
15 **of them, did you -- I take it you did not review the**
16 **remaining 6,000-plus parcels to see if he repeated this**
17 **alleged error in other places?**

18 A. No, but I -- well, I've heard about other
19 parcels that either have certain site restrictions on it
20 or are limited in number of stories, and it's the
21 same -- it's the same issue.

22 If -- if you don't take into account what the
23 potential of that property is, when -- to be able to
24 benefit or not benefit, then you're going to misapply
25 the benefit.

1 **Q. But you didn't conduct any analysis of those**
2 **other properties?**

3 A. No, I came up with a few examples and I
4 presented them.

5 **Q. Would you agree that -- for purposes of an LID**
6 **in Washington that the increase in the market value of a**
7 **property -- to a project funded by a LID, is the special**
8 **benefit?**

9 A. That -- that's the portion that can be
10 separately taxed.

11 **Q. I'm sorry, I didn't hear the --**

12 A. Well, the portion that is special benefit is
13 what can be separately taxed. The general cannot be
14 taxed.

15 **Q. Right. But -- but to -- isn't it true that to**
16 **get to the special benefit provided by a project, an**
17 **appraiser -- by a LID project, an appraiser looks at --**
18 **reaches a conclusion regarding the increase in market**
19 **value?**

20 A. The increase in market value due to special
21 benefit, yes.

22 **Q. Okay. And so is your -- and let me -- let me**
23 **just ask, are you saying that after you -- after an**
24 **appraiser determines the increase in market value from**
25 **an LID improvement, that he or she needs to subtract out**

1 **the general benefit in order to arrive at the special**
2 **benefit?**

3 A. Yeah. If he's measured the total benefit, then
4 he needs to do that.

5 **Q. Okay. So I want you to walk us through -- and**
6 **I'll ask you specific questions so that you're not just**
7 **out in space in having to answer.**

8 **First, is that something you've done in your**
9 **practice where you have calculated a -- a benefit and**
10 **then subtracted out the general to get to the special?**

11 A. Yes, I have.

12 **Q. And what was the context of that?**

13 A. In that particular constant, it was a property
14 that was adjacent to a light rail station.

15 **Q. Okay. That's the one you told us about earlier**
16 **today?**

17 A. That's correct.

18 **Q. And was that for an LID?**

19 A. No.

20 **Q. Was that imminent domain?**

21 A. Yes.

22 **Q. And was part of your assignment there to**
23 **calculate the general benefit?**

24 A. No, part of the assignment is to see if there's
25 a special benefit, because the special benefit is to be

1 offset, the general benefit isn't.

2 So once you measure the total benefit, you have
3 to deduct, a portion of it is considered general.

4 **Q. And are you aware of, in Washington LID cases,**
5 **other appraisers subtracting out a general benefit from**
6 **their benefit determinations?**

7 A. I don't have any examples to offer you.

8 **Q. And when we talk about general benefits in the**
9 **context of municipal projects -- Mr. Lutz raised the**
10 **stadium example -- isn't it true that when**
11 **municipalities measure those benefits, general benefits,**
12 **they look at things like number of jobs created,**
13 **increase in the tax base, and other areas of general**
14 **concern for the City?**

15 A. Well, when he asked the question of me, I assume
16 he's talking about real estate values.

17 **Q. Okay. And are you saying that Mr. Macaulay**
18 **should have valued some of the general benefits to be**
19 **provided by this park, such as an increase in employment**
20 **as a result of the project?**

21 A. No. What I'm saying is that he -- he has said
22 that he's -- he's looked at a lot of other cities, that
23 he has anecdotal information of total benefit. He has
24 not taken that total benefit and divided it between what
25 is general from the property and what is special to the

1 particular property.

2 **Q. Okay. And -- understanding that, but I want to**
3 **keep asking you about -- at least what I think of as**
4 **general benefits from a municipal project like this.**

5 **Should Mr. Macaulay have tried to value and back**
6 **out the increase in Seattle City taxes as a result of**
7 **this project?**

8 A. No. He should have backed out everything
9 related to real estate value.

10 **Q. Okay. How would you calculate here the general**
11 **benefit to real estate value from this LID project?**

12 A. Well, I think that's -- that goes hand in hand
13 with how would you calculate the special benefit. You
14 would -- like I said, you would take other parks in
15 Seattle and see if you could derive some type of -- see
16 if there was, to start with, a general benefit from
17 proximity to a particular park.

18 **Q. And so those are existing parks in Seattle?**

19 A. Sure, yeah.

20 **Q. Okay. Is there any -- wouldn't it affect the**
21 **general benefit analysis if the -- you know, this is**
22 **coming along now versus a park that's been in place for**
23 **a hundred years?**

24 A. Well, but if there's a benefit -- this is what
25 Mr. Macaulay's doing, he's suggesting a park will be in

1 place and what benefit will it create.

2 **Q. And then if I understood your testimony on**
3 **direct, to get to this general benefit from a park in**
4 **the Seattle area you would have done a matched pair**
5 **analysis?**

6 A. That's the way I would have looked at it. I
7 would have tried to see if I could reasonably discern
8 the difference in value based on proximity to a park.

9 **Q. And how about the -- how does it affect your**
10 **approach, the fact that Seattle doesn't have a -- an**
11 **existing set of improvements readily available, hence**
12 **Mr. Macaulay looking to other cities, taking on such a**
13 **large --**

14 A. Well, I -- I think you could have -- there's the
15 sculpture park down there by the waterfront already. He
16 didn't do that. He sort of -- sort of tried to exit
17 out. But there are other waterfront parks around
18 Seattle that you could look at to see if they created
19 certain benefits. And there's waterfront in Kirkland,
20 he hasn't looked at that.

21 You know, so I think you could find examples
22 that would inform you if you -- if you go to other
23 cities and start -- and, you know, he's presented these
24 studies from other cities, but -- and at one point, when
25 he's talking about the Embarcadero study, the complexity

1 of other neighborhoods and relationships and topography,
2 to me, creates a whole series of complexity that
3 requires some adjustment for.

4 I'm not saying you couldn't do that and look at
5 that. But I'm just -- I find it somewhat remarkable
6 that there's no investigation done in Seattle itself.

7 **Q. And so, again, to make sure I understand it, you**
8 **would have valued the general benefits to be provided**
9 **from this LID?**

10 A. You -- you would have measured the benefit
11 present, and then you would have had to decide which
12 portion is special and which portion is general.

13 **Q. Okay. Is it -- and, again, you're -- you're**
14 **testimony is that you can, as an appraiser, arrive at a**
15 **property value increase that's attributable to -- real**
16 **estate property value increase that's attributable to**
17 **general benefit.**

18 A. Well, if -- if you can't -- well, first of all,
19 if you can't measure any benefit, no study; right? You
20 know, if you can't find a benefit, there is no
21 study.

22 If you find a benefit, then you have to decide,
23 is it a special benefit or is it a general benefit.
24 Where is that benefit coming from?

25 And -- and this is sort of a completely sort of

1 esoteric discussion because Mr. Macaulay just assigned
2 benefit. So -- but in doing it properly, you would go
3 out and measure the benefit and see what you could find
4 out and what kind of benefit it was, and then decide if
5 it's special or general.

6 **Q. So there was a question that Mr. Lutz asked you**
7 **about -- more of a statement about -- don't assume the**
8 **general benefit is zero.**

9 **And I wanted to ask you, is that what you think**
10 **Mr. Macaulay did here? That he assumed the general**
11 **benefit as zero.**

12 A. Well, Mr. Macaulay -- all you can say from his
13 study is he says he measured the total benefit before
14 and after.

15 And -- and by definition, he's calling it all
16 special. He thinks general is zero. And then in his
17 deposition, he confirmed that he thinks general is zero
18 or immeasurable. That's what he confirmed in his
19 deposition.

20 **Q. All right. I have a different recollection of**
21 **that. But I will grant you that he said it's**
22 **measurable.**

23 **And, again, sorry to beat a dead horse on this.**
24 **But on this particular project, how would you have**
25 **measured general benefit? You mentioned the matched**

1 **pair analysis you would have done with local parks. Any**
2 **other steps?**

3 A. Well, that's -- that's the appraisal tool. You
4 would certainly look at acceleration of development.
5 That would be one thing too, is development more
6 accelerated.

7 **Q. Around those local parks?**

8 A. Yeah, around a park, or does it seem to be --
9 not just are properties more valuable, but is there an
10 acceleration. You would also look at negative aspects,
11 as well. You would consider issues related to the
12 operation of the park, whether they created problems or
13 not.

14 **Q. And those would be factors -- you would look at**
15 **the negative aspects of the park in determining the**
16 **general benefit, because a negative aspect would pull**
17 **down the general benefit?**

18 A. You would -- you would look at the total
19 benefit, and then you would need to decide what was
20 special of that benefit and general, as -- as applicable
21 to particular properties.

22 **Q. Right. And I'm trying to figure out how --**
23 **where's the analysis that -- you know, how would you**
24 **actually -- what would you look at to calculate that**
25 **general benefit? And it's possible you've told me**

1 **everything, but if there's anything else?**

2 A. Well, you would -- you would just see, is -- is
3 this park create positive benefits for this neighborhood
4 at large?

5 There's lots of discussion in case law and in
6 the LID manual as to what is considered general as
7 opposed to what is considered special. And you would go
8 through that analysis and be very discrete about it in
9 terms of deciding, hey, I think this portion is general
10 and I think this portion is special.

11 **Q. Okay. And you believe that's in -- that**
12 **discussion is in LID case law in Washington?**

13 A. It's -- it's in the -- yeah, that's why -- why
14 it's not called just a benefit analysis. It's called a
15 special benefit analysis.

16 **Q. Right. But what about the total minus general**
17 **equals special? You've seen that in Washington LID case**
18 **law?**

19 A. No, I -- well, I've read that -- I've got
20 examples of that allocation process in the materials
21 I've produced.

22 **Q. Okay. And that -- those are in the -- the**
23 **manuals?**

24 A. The -- there's -- again, there's admonitions in
25 the manual regarding the importance of doing that. And

1 then also in -- in Eaton's texts and in other cases that
2 I've cited.

3 **Q. And do you know, sitting here, if you've cited a**
4 **LID case to us, a Washington LID case where the concept**
5 **of total benefit minus general benefit equals special**
6 **benefit?**

7 A. I believe that -- the -- the LID manual speaks
8 to that. Yeah, it's the -- it's the Heavens versus King
9 County Rural Library District. They actually define
10 special benefits there.

11 **Q. Right. Understood the definition. I guess I'm**
12 **asking if you were aware of a case where a court is**
13 **actually engaged -- for example, a case in Washington**
14 **before, where a court threw it out because the appraiser**
15 **did not engage in -- subtract out a general benefit from**
16 **the total benefit found?**

17 A. Not in the way you've said it there, no.

18 HEARING EXAMINER VANCIL: Let me make sure I
19 understand the testimony you did provide though. You
20 indicated there's no case that does that, but are you
21 saying that the Heavens case does discuss the formula?

22 THE WITNESS: Yes.

23 HEARING EXAMINER VANCIL: Identify the
24 formula of total benefit minus general benefit equals
25 special benefit.

1 THE WITNESS: Yes, the benefits have to be
2 special, not general.

3 HEARING EXAMINER VANCIL: That was the first
4 question. I just wanted to be sure.

5 BY MR. FILIPINI:

6 **Q. It is. But I'd like you to look at Exhibit 12.**
7 **Because I've got to say, I don't see that. I see a**
8 **definition of special benefits. Certainly, I see**
9 **definition of general. And there are -- there are many**
10 **contexts in tax versus administrative fees, LIDS**
11 **condemnation, where these concepts are used. But I**
12 **don't see -- and I know that Heavens is a LID case, but**
13 **I don't see -- how the court -- talking about removing**
14 **general from the total to get to special.**

15 MR. LUTZ: Objection to form of the
16 question. Argumentative.

17 HEARING EXAMINER VANCIL: Do you have a
18 question?

19 BY MR. FILIPINI:

20 **Q. Yeah, my question was -- when Mr. Gibbons**
21 **answered your question saying that -- saying that he saw**
22 **in the Heavens case that formulation, even if it wasn't**
23 **applied there -- I guess I'm saying I don't see the**
24 **formulation, but if you could point it out to me?**

25 A. Well, I think the formulation there is, it --

1 again, I'm just going from what's written here, but
2 there's a requirement there that you make sure that
3 you're not assessing somebody for benefits that are
4 general. They have to be special benefits. And
5 therefore, if there was a general benefit, you've got to
6 subtract it out, otherwise you're including it as
7 special.

8 HEARING EXAMINER VANCIL: So your testimony
9 isn't that -- just directly states, in that case, that
10 the means of identifying special benefit is identifying
11 the total benefit minusing the general benefit equals
12 special benefit.

13 THE WITNESS: Yeah. The -- in my --

14 HEARING EXAMINER VANCIL: And I understand
15 the formula.

16 But your testimony, as I understood it, was
17 saying that if I looked in this case, I would see
18 somebody saying that.

19 THE WITNESS: No. I don't know that. I
20 don't know that.

21 HEARING EXAMINER VANCIL: Okay.

22 THE WITNESS: I'm just reading the quote
23 that they --

24 HEARING EXAMINER VANCIL: I do understand
25 how you derived where you're at and what's in the case.

1 What I see here, I just wanted to make sure because I
2 just --

3 THE WITNESS: That's my only understanding,
4 is what's written there.

5 HEARING EXAMINER VANCIL: Thank you. Sorry
6 to step in, Counsel. I just wanted to make sure I was
7 understanding the testimony we got.

8 MR. FILIPINI: I appreciate that.

9 BY MR. FILIPINI:

10 **Q. So I'd like to ask you about -- if I'm correct,**
11 **one of your overall conclusions and something that you**
12 **also talked about in your direct today, is that**
13 **Mr. Macaulay and his team didn't compute values, they**
14 **assigned them -- and I don't know if I'm phrasing that**
15 **correctly -- didn't calculate values, they assigned**
16 **them; is that correct?**

17 A. No. What I said was they didn't measure after
18 values. They assigned special benefit to before values.

19 **Q. Okay. Let me just make sure I --**

20 **Okay. So in your -- Exhibit 6, which is your**
21 **January 30th letter and in your testimony, when you say**
22 **that -- because sometimes you phrase it more generally,**
23 **that -- that values were assigned and not measured.**

24 **Is -- is this what you're referring to?**

25 **Didn't measure after values, they assigned them?**

1 A. No. They assigned the special benefit to before
2 values and created after values.

3 **Q. Okay. So didn't measure after values, they**
4 **assigned special benefit to before values?**

5 A. Yeah.

6 **Q. Okay. So why do you believe that Mr. Macaulay**
7 **did not measure after values?**

8 A. Because I read his report and read his
9 deposition and it's -- it's clear that he assigned
10 percentages to before values or components of before
11 values to get after values.

12 **Q. So your understanding is that if -- give you a**
13 **simple example -- a before value went from ten to 15 --**
14 **15 in the after -- ten in the before, 15 in the after,**
15 **that Mr. Macaulay got that by assigning a percentage**
16 **increase of 50 percent to the before, as opposed to**
17 **calculating the \$5 increase and then stepping back and**
18 **saying, that's 50 percent?**

19 A. Well, yeah, there's actually a great example in
20 his deposition where the beverage and food projection in
21 the before case for a particular hotel is \$35. And then
22 he assigns 1.75 percent increase to that to calculate a
23 \$35 and, I think it's \$0.61 change in the amount of
24 money that somebody is going to spend on food and
25 beverage.

1 And so the after value is not arrived at in an
2 independent manner. It's merely created by an
3 assignment of benefit.

4 **Q. Okay. So -- and you think that Mr. Macaulay has**
5 **done that throughout the study?**

6 A. I do, yes.

7 **Q. Okay. If you could look at Exhibit 16. I have**
8 **a question for you that's related to this.**

9 **And just let us know when you've got --**

10 A. I've got it.

11 **Q. Okay. So at Exhibit 16, there's a -- which is**
12 **page 7 of Mr. Macaulay's final special benefit study;**
13 **correct?**

14 A. Yep.

15 **Q. Okay. There's a chart on the top of page 7. Do**
16 **you see that chart?**

17 A. I do.

18 **Q. And is your testimony that Mr. Macaulay took**
19 **these estimated special benefit ranges and applied them**
20 **to the before values for the various types of property**
21 **class?**

22 A. Well, he took a variety of -- these are the
23 ranges, okay, from high to low, but in -- in creating an
24 after value, he took a particular lift that he felt
25 would -- a property would receive, and assigned it to

1 that property to create an after value.

2 **Q. And so it's -- you don't understand, for**
3 **example, that Mr. Macaulay valued the after values of**
4 **6,000 lots, whatever it is, noticed the range and then**
5 **compiled this chart based on the underlying work he did,**
6 **noticing, well, my -- for this sort of class, I see a**
7 **low of three percent and a -- a low of .5 and high of**
8 **three, therefore --**

9 A. He did not independently arrive at before and
10 after values based on my read of the study.

11 **Q. Okay. And what if he did? What if he did go**
12 **out and calculate after values for each of the**
13 **properties and then -- well, period.**

14 **What if he did? What --**

15 A. Well, I would have to ask how he did that.
16 Because that's not what his -- that's not the way his
17 study reads at all.

18 And it's -- and when you go through the
19 individual assignments of after increases and look at
20 the -- how he supplied, like, three percent to the
21 condominiums, I mean, that's -- that's not how he did
22 it. So.

23 **Q. It's not your understanding of how he did it?**

24 A. Yeah, that's correct.

25 **Q. And then, I guess, if you could look at**

1 **Exhibit 6, which is your January 30th letter on page 1.**

2 **On page 1, you repeat this chart, I believe; is**
3 **that correct?**

4 A. Oh, yes, it is. Yes, I did.

5 **Q. Okay. And then, as I understand your analysis**
6 **in your January 30th letter, you are saying that the --**
7 **this chart was Bob's key in applying these**
8 **pre-determined special benefit ranges to -- to the**
9 **before values; is that correct?**

10 A. Well, can you tell me what you're pointing to?

11 **Q. Sure.**

12 **Let me ask, I guess, why did you include the**
13 **chart? Maybe that will change my question. Why did you**
14 **include the chart on page 1?**

15 A. Well, I -- because I'm summarizing his study.
16 And that's -- that's his summarized special benefit
17 percent study.

18 **Q. Okay. So do you know whether or not**
19 **Mr. Macaulay calculated the special benefits and then**
20 **prepared the chart as a summary?**

21 A. Well, probably -- you know, if you're just
22 speaking about that particular chart, probably so. I
23 don't have his Excel spreadsheet. I don't know how he
24 linked the numbers.

25 But it's pretty clear from the analysis and his

1 deposition that he applied increases to particular
2 before values to create after values.

3 **Q. Okay. And I guess, how would you -- assuming he**
4 **did that, for purposes of this question or line of**
5 **questions, how would you have created the after values?**

6 A. Well, bearing in mind that I -- you can't
7 measure this kind of percentage, in my opinion. You
8 can't measure an incremental two or one percent increase
9 in a property, as you know.

10 So I think you would have to go out and decide,
11 you know, when you collect sales of properties around
12 the park you would have to see what -- what condominiums
13 are selling for in a particular location and near a park
14 and what condominiums are selling for further away.

15 And that would be your barometer for deciding
16 how much properties who are worth more.

17 **Q. And that would be in how you would get to the**
18 **after value?**

19 A. Yeah, if you -- if you were going to make a
20 statement that, you know, the typical price of a
21 condominium is higher by a park, you know, reaches a
22 certain level, then you would develop an after value.

23 You wouldn't simply just apply an increase to
24 your -- all your before values.

25 **Q. Okay. I want to understand what that would --**

1 **what that would look like. So let's break that down.**

2 **If you're going to pick a particular parcel and**
3 **apply an after value to it, how would you -- how would**
4 **you calculate that after -- that after value? What --**

5 A. Well, if I was going to do a study on a park and
6 looking around Seattle, I would look at condominiums
7 that were close to parks and see if, you know, more
8 condominiums are built, they achieve generally higher
9 values, and then you could -- then you could go in to
10 study and say well, these properties will achieve higher
11 values.

12 **Q. Okay. And you would have done that in a mass**
13 **appraisal approach?**

14 A. Well, again, I -- as you know, I have a lot of
15 problems with the creation of a study with this many
16 properties in a downtown area. I think there are some
17 elements there. So I wouldn't have done it for a study
18 like this. I don't think you can do it. I don't think
19 it's possible to do.

20 **Q. Okay. So you don't believe it's possible, at**
21 **the end of the day, to derive the after values in a**
22 **study like this?**

23 A. The concept that \$56.3 billion of property went
24 to \$56.8 billion of property as a consequence of this
25 landscape boulevard, I -- there is no way of

1 authenticating that kind of value change.

2 **Q. Okay.**

3 A. This type of real estate is -- just does not
4 lend itself. Market forces completely obliterate any
5 tiny little noise factor like that.

6 **Q. So -- so the answer to my question is, you don't**
7 **believe it's possible to derive the after values here on**
8 **this project?**

9 A. I do not -- well, I do not, no.

10 **Q. And how about given the project characteristics,**
11 **was it possible to derive before values on a project of**
12 **this -- like this?**

13 A. Well, you can derive before values, but you
14 would have to recognize the kind of margin of error you
15 have.

16 So if you're -- if you're doing a study where --
17 I'm sorry, I'm feeling like an old record here. If
18 you're doing a study, your margin of error is greater
19 than what you're trying to find, your study fails.

20 **Q. Right. So let me ask you a question on a -- and**
21 **I'm trying to understand the -- where is the floor, in**
22 **your mind, for the incremental increases in property?**
23 **And I know you've testified that you can't measure**
24 **incremental increases in property of one percent, you**
25 **said a few minutes ago.**

1 **But what if I got an appraisal to sell my house**
2 **and my last one was ten dollars and my next one was \$11.**
3 **I mean, what -- that happens in the appraisal world;**
4 **correct?**

5 A. Of course it does, yeah.

6 **Q. And so is your opinion that -- which one of**
7 **those isn't valid? It's only a one percent --**

8 A. What's your -- what you're missing in that --
9 that's a great comparison.

10 What you're missing in that comparison,
11 actually, in this case, it's \$100 and \$101. Okay? So
12 what you're missing is the \$100 is the component.

13 But when you focus on the \$1 and tax on it,
14 that's where the error is. That is not -- that -- that
15 one dollar extra does not take on special significance.
16 The difference is between a \$100 and \$101. And it could
17 be \$102 or \$99.

18 **Q. But don't we tax on that all the time? I mean,**
19 **doesn't the King County Assessor taxed on --**

20 A. No.

21 **Q. -- small increases?**

22 A. Not on the margins. The tax assessor is looking
23 at, you know, basically a tenth of one percent on the
24 total property. So it's a tenth of one percent of one
25 percent. It's a minuscule increment.

1 So it -- it doesn't -- so their margin of error
2 doesn't really matter because their tax rate is a tenth
3 of a one percent. There's no other way of doing it.

4 But here, you're being assessed for that one
5 dollar. It becomes very real. And I think that creates
6 an additional burden on the appraiser. Now, the dollar
7 is getting very important. You're trying to find the
8 dollar. You're not trying to find the \$100.

9 And I think it -- I think it creates a special
10 issue for the appraiser.

11 **Q. All right. But it is -- so you're not aware of**
12 **other contexts in which taxation on an increase is done**
13 **on very small increments, increments both of increased**
14 **value of below .5 percent?**

15 A. Well, they're done -- they're done on that, but
16 they're done on -- in the real property assessment
17 world, your property went from a \$100 to \$101. You
18 know, the --

19 **Q. This should just be an issue of math. I mean,**
20 **at what point -- I'm trying to determine at what point**
21 **is there a floor in which the -- you know, I think your**
22 **testimony is that under 5 percent, we can't -- you know,**
23 **we can't measure it.**

24 And I -- I'm just wondering, aren't there real
25 world examples where that's measured in tax all the

1 **time, increases lower than that?**

2 A. Well, I -- if you're looking for the difference
3 and -- and that is the goal of the -- the project and
4 you're getting down to the point where -- like you said,
5 two appraisers on the same day, equally motivated to
6 come up with the right answer, create that difference
7 for you. I think you would argue that that difference
8 is a matter of mere noise. It doesn't take on special
9 significance like it is put to in this study.

10 HEARING EXAMINER VANCIL: We'll take a break
11 there and return at 3:15.

12 MR. LUTZ: Thank you.

13 (A break was taken from 3:02 p.m. to 3:20 p.m.)

14 HEARING EXAMINER VANCIL: We'll return to
15 the record. Mr. Gibbons on cross.

16 BY MR. FILIPINI:

17 **Q. I'm going to hand you what has been marked as**
18 **Exhibit 3 in this proceeding. It's Mr. Macaulay's final**
19 **benefits study. And I want you to have that cleanest**
20 **copy --**

21 A. Do you have a magnifying glass?

22 **Q. I know. Wow, it's even worse on -- on these.**
23 **And then Mr. Edlund-Cho was nice enough to make us some**
24 **copies of that particular page.**

25 **HEARING EXAMINER VANCIL: Which page are you**

1 **on?**

2 MR. FILIPINI: I am on -- I'd have to look

3 at --

4 THE WITNESS: 1 of 13. Is that what that

5 says, 1 of 19?

6 BY MR. FILIPINI:

7 **Q. 1 of 13, on the bottom it says it is.**

8 **Mr. Macaulay's report opens with the summary, and**
9 **then it goes -- it attaches some charts. These are the**
10 **charts. It's -- it's the first page of the charts.**

11 **And then first -- well, what I'd like to do,**
12 **Mr. Gibbons, is to bring our discussion before the break**
13 **down to a concrete level with the proposed final special**
14 **benefit assessments that -- proposed final assessments**
15 **that Mr. Macaulay has generated.**

16 **Have you had a chance to look at these charts in**
17 **the report?**

18 A. Yes, I have.

19 **Q. Okay. And then for the benefit of those of us,**
20 **including opposing counsel and me, if you could read us**
21 **the headers of the final six columns so -- so we know**
22 **what we're looking at. Because it got partially cut off**
23 **in the copies we have.**

24 A. So the -- the number one of those six. You
25 know, starting from the right, you mean?

1 **Q. Yes.**

2 A. Yeah, market value without LID, highest and best
3 use with LID, market value with LID, special benefit,
4 special benefit percentage change, total assessment.

5 **Q. Okay. And then directing your attention to the**
6 **second and last column, entitled "Special Benefit,**
7 **Percentage Change." On this page -- do you see that**
8 **that -- the first entry in that would be .062 percent?**

9 A. I think that's right.

10 **Q. Okay. And then going under that, I'm just going**
11 **to read a number of them -- 0.32 percent, 0.92 percent.**
12 **0.26 percent. Are you tracking that column?**

13 A. I -- pretty much.

14 **Q. Okay. Okay. A variety of different percentage**
15 **changes and special benefit?**

16 A. Yeah.

17 **Q. Okay. And then if I -- and then do you**
18 **understand that the -- if you compare the market value**
19 **with that LID column -- and we can look at just the**
20 **first entry if you'd like, the first row. I'll focus**
21 **all my questions on the first row.**

22 **If you look at the market value without LID,**
23 **3,881,000; correct?**

24 A. Yeah.

25 **Q. And then the market value with LID, 3,905,000;**

1 **correct?**

2 A. Yep.

3 **Q. Okay. And -- and subtracting 3,905,000, minus**
4 **3881, results in a special benefit of 24,000; correct?**

5 A. Yep.

6 **Q. Okay. And then -- a special benefit percentage**
7 **change of .62; correct?**

8 A. Yep.

9 **Q. Okay. And so I -- the reason I asked you to**
10 **look at this is, as I understand your testimony, you**
11 **believe that Mr. Macaulay applied the special benefit**
12 **change of .62 to the market value without LID of**
13 **3,881,000 to get to the market value with LID of**
14 **3,905,000; is that correct?**

15 A. Well, not -- not necessarily with that level of
16 precision in the way you stated it.

17 My understanding of the way he did this, and --
18 and we did ask for a copy of the Excel model, but it was
19 locked so I couldn't look at the formula.

20 But my understanding of the way he did it is, he
21 applied an adjustment to the before value based on an --
22 an assumed increase, rounded that increase to \$24,000,
23 and then he's shown the computation there of what that
24 actually is in a percent.

25 **Q. So you don't -- even in your view, you don't**

1 **believe the special benefit change column is -- is the**
2 **assigned value that Mr. Macaulay then took and applied**
3 **to the market value without LID?**

4 A. I think what he's -- I mean, I've looked at a
5 lot of these, and they don't exactly calculate out --
6 you know, he's -- you notice that he's got exactly
7 \$24,000 in this particular one. So he -- that number is
8 rounded from an increase that he's applied to the before
9 value that then is subtracted.

10 So that's -- so he -- he applied an adjustment
11 factor to the before value to create the after value
12 and -- and rounded that off so that it rounds to the
13 nearest one thousand dollars.

14 **Q. And then the special benefit percentage changed**
15 **reflects --**

16 A. Yeah.

17 **Q. -- with the rounding?**

18 A. Yeah, and somewhere he will have a table where
19 he's decided what percentage that he's applied to make
20 that adjustment. And whether it's like a half percent
21 that then rounds or whether he's assessing land
22 differently than the improvements. But he is making the
23 adjustment to the before value.

24 **Q. Okay. And when he makes that adjustment to the**
25 **before value, to be frank, isn't -- isn't that what**

1 **appraisers do? I mean, figure that there's going to be**
2 **a percentage -- in a project like this I should say,**
3 **figure there's going to be a percentage increase of --**
4 **of X is reasonable, and then that's your aftermarket**
5 **value?**

6 A. Well, if that's what he has done, then he's
7 being conclusory as to what he thinks the lift is. He
8 just simply said, I'm going to assume everybody has this
9 lift. And he hasn't actually measured it. He's simply
10 applied it. And that's what he's done.

11 **Q. But you agree that looking at these numbers,**
12 **there -- and when I say these numbers, I mean, the**
13 **special benefit change percentages which are roughly**
14 **approximate to -- to, in your view, whatever must be**
15 **behind the scenes; correct?**

16 A. Yeah, I mean --

17 **Q. Is --**

18 A. But -- yeah. Sorry. Yes.

19 **Q. And there -- they range from zero -- just on**
20 **this single page all the way up to the highest IC is 3.5**
21 **with lots of numbers in between.**

22 **Any -- 3.53, I should say.**

23 **Any indication -- do you have reason to**
24 **believe -- let me withdraw this. Do you have reason to**
25 **believe he has additional data behind the scenes showing**

1 **the percentages applied?**

2 A. I requested a copy of his Excel spreadsheet and
3 it was provided, but it was provided locked with a
4 password, and it wasn't provided with the links where
5 you could see how he's done it.

6 So -- but -- so -- but the -- to the best of my
7 knowledge, the way he's done it is he's applied it to
8 before values. Because I've calculated some for certain
9 properties, like the condominiums, they're all, like,
10 exactly like three percent in many of the towers. So
11 that is a simple application of a percentage.

12 Now, of course, he may have different formulas,
13 and we went through one with the hotels where he
14 applied, like, 1.75 percent to room revenue or beverage.
15 But he's still applying his special benefit. He's not
16 measuring the difference.

17 **Q. He's applying -- in your view, he's applying a**
18 **percentage to the market value without LID and then**
19 **arriving at a special benefit number?**

20 A. Yeah.

21 **Q. Okay. And would it change your conclusion if he**
22 **calculated the market value with LID, I guess I would**
23 **say, from the ground up?**

24 A. Well, I -- I guess I would like to know that,
25 but again, your question answers itself.

1 If the -- if the after values have been
2 developed independently of the before values then, yeah,
3 my testimony is incorrect.

4 **Q. Okay. And, again, I know I've asked you this.**
5 **But just to be clear, is there -- well, I actually**
6 **haven't asked you this.**

7 **Is there a way -- when you're talking about**
8 **trying to get to the aftermarket value with LID, is**
9 **there a way to get there other than assuming percentage**
10 **increases based on all the factors he lists in his**
11 **report, proximity, market conditions, the other things**
12 **he lists?**

13 A. I think if you could show that -- that, you
14 know, you had a series of, like, matched pair sales
15 comparisons, where you could show hotels have higher
16 occupancies or generate higher room rates or have higher
17 room beverage counts. Those hotels down by existing
18 waterfront now, do they develop higher occupancy rates
19 because of being closer to the waterfront and closer to
20 that amenity?

21 There's absolutely nothing on the study from
22 that.

23 **Q. And you don't know, sitting here, though, if**
24 **those sort of considerations went into the percentages**
25 **that he applied for the aftermarket value, after LID**

1 **value?**

2 A. Well, I'm just saying that -- the manner of the
3 application, where he's taken this incremental of
4 percentage and applied it across everything, in my mind,
5 is not a measurement of special benefit.

6 **Q. Okay. When you say incremental percentage,**
7 **again, it's not a -- we're not talking about a constant**
8 **percentage. It's clear from the page it's all over the**
9 **map?**

10 A. Well, it's -- well, it's all over the map
11 between, you know, half and three percent. I don't call
12 that all over the map, but I think that's -- there's a
13 great consistency between different data of different
14 property types. And I think condominiums are almost all
15 at three percent. So I don't think it's all over the
16 map. All over the map would be, you know, zero to
17 50 percent. But it's not.

18 **Q. Within this -- within this range, we're -- you**
19 **agree that he has not applied a consistent percentage**
20 **increase?**

21 A. He's applied consistent increases within that
22 range. You know, that is a very consistent range
23 between -- like I said, it's -- it's small enough to not
24 be measurable, but it's very consistent. There's no --
25 there's no -- I mean --

1 **Q. Let me ask you about that.**

2 **So one of the points that the objectors going on**
3 **today made in their opening argument -- and I believe**
4 **that you testified to it on direct, but regardless --**
5 **that there's not much difference in this project between**
6 **the before LID conditions and the after LID**
7 **conditions; is that correct?**

8 A. I said -- I didn't say it like that. Well, I
9 might have said it like that, but what I meant was, many
10 of the elements present in the before LID are present in
11 the after LID, which would require an examination of
12 their contribution.

13 **Q. If the change is not significant in this LID**
14 **between after and before, wouldn't we expect to see**
15 **small ranges of market value with LID numbers in the**
16 **after?**

17 A. It's got to be measurable. You know, would we
18 expect to see -- I think that's the entire -- you've
19 kind of just wrapped up the entire floor of the study.
20 I think this -- this broad application of a percentage
21 that's put at a certain amount that -- that there is
22 absolutely zero evidence for and it's not measurable and
23 so wouldn't you expect to see, no, you would expect it
24 to be measured. That's what you would expect. You
25 would expect the appraiser to go out and measure it, not

1 simply assume it's in place.

2 **Q. And I agree -- or I understand that you're**
3 **taking the position that he didn't measure these, that**
4 **he just assigned them.**

5 **But my question is, sitting there looking at**
6 **what objectors are characterizing as not significant**
7 **improvements between the before and after LID, wouldn't**
8 **you expect to see small special benefit increases?**

9 A. No, this building we're sitting in, we're not
10 \$1.4 million because of that. No. I --

11 **Q. But is your point that you wouldn't expect that**
12 **they're not measurable? That's what I'm trying to get**
13 **at. Is -- is are you saying that you would expect to**
14 **see increases that are so small that they're not**
15 **measurable?**

16 A. I -- I think there are overwhelming -- there are
17 other forces that, when people decide to sign leases or
18 when a building sells on the cap rate, the list of
19 criteria that an investor uses doesn't include what
20 we're talking about.

21 So it -- it's not a measurable issue for that
22 investor. Does -- would not make a difference.

23 Are you going to lease space in this building
24 or -- or -- or 1201? Proximity to the waterfront, in my
25 mind, would not represent a leasing decision that would

1 translate into a measurable two or three percent
2 difference.

3 **Q. So I'm going to -- and you can disagree with me**
4 **if you would like --**

5 A. Okay.

6 **Q. But I'm going to take that answer as, you**
7 **believe it's -- it's not a calculable difference between**
8 **the -- not calculable here between the market value**
9 **without LID and market with LID?**

10 MR. LUTZ: I'd like to let his question and
11 answer stand on that --

12 MR. FILIPINI: Well, then I'll ask it again
13 because I don't think he answered my question. I'm
14 trying to --

15 HEARING EXAMINER VANCIL: Are you raising an
16 objection?

17 MR. LUTZ: Yes.

18 HEARING EXAMINER VANCIL: What's the
19 objection?

20 MR. LUTZ: The objection is that he was
21 re-characterizing the --

22 HEARING EXAMINER VANCIL: So
23 mischaracterizing.

24 MR. LUTZ: Yeah. Mischaracterizing.

25 HEARING EXAMINER VANCIL: Are you going to

1 argue it or you want to restate question?

2 MR. FILIPINI: I can restate the question.

3 BY MR. FILIPINI:

4 **Q. So when you look at the market value without LID**
5 **numbers in this study and then the market value with LID**
6 **numbers in the study, generates a range of special**
7 **benefit numbers; correct?**

8 A. That's what he purports to do, yes.

9 **Q. Okay. And then the special benefit percent**
10 **increases as -- so in other words the increase of market**
11 **value with LID to market value without LID range from**
12 **less than one to a high of around four percent in the**
13 **study; is that correct?**

14 A. Well, that's what he's applied. It's not
15 measured. That's -- that's my criticism of it, it's not
16 a measured increase.

17 **Q. Well -- right. But my question to you**
18 **is would -- in a project that has been characterized**
19 **where the before is similar to the after, wouldn't you**
20 **expect to see a small percentage increase -- or small**
21 **special benefits, as we do here?**

22 **And if your answer is no because they're too**
23 **small to be measured, I understand that. I was just**
24 **trying to --**

25 A. No, my answer is it's not about expectation.

1 It's about tested market evidence. It's not about
2 expectation.

3 We can sit here and postulate, imagine,
4 speculate, and you're talking, could you imagine
5 speculate, postulate. That's not what the test is.

6 The test is measurement.

7 **Q. Right. But I'm asking you as an appraiser,**
8 **when -- if you have a situation, like ours, where**
9 **apparently the market value -- I'm sorry, the after**
10 **condition is similar to the before, wouldn't you expect**
11 **a -- a low value of -- of ranges?**

12 A. I'm -- my answer to you is that is imaginary.

13 You -- you could certainly imagine that that
14 might be the case, but the requirement is to test that
15 assumption and -- and you can't just go on imagination
16 and put it down in the study. You have to test it.

17 **Q. Okay. So sitting here -- and, again, have you**
18 **given me all the reasons why you believe that**
19 **Mr. Macaulay didn't test that? Did not test his market**
20 **value with LID increases as compared to his market value**
21 **without?**

22 A. Well, I can't tell you if I've given all the
23 reasons. I've answered all your questions related to
24 it.

25 **Q. Okay. And the core of your belief on that is**

1 **that he applied a value rather than measured it;**
2 **correct?**

3 A. He applied special benefit. He did not measure
4 it.

5 **Q. Okay. In your opinion, what would the special**
6 **benefit increases have been? You can speak in terms of**
7 **percentages if you'd like.**

8 **If the City had included the removal of the**
9 **viaduct in -- in the LID?**

10 A. What would have been the -- I -- I don't wish to
11 speculate. Certainly some properties are sold down
12 there at prices they would not have sold for.

13 **Q. Would you have -- would you have expected a --**
14 **if the before-LID condition included the removal of the**
15 **LID as opposed to assuming that it's down as**
16 **Mr. Macaulay did --**

17 A. It -- it will --

18 **Q. -- would you have expected a significant special**
19 **benefit increases for some properties?**

20 A. For some properties, if the LI -- if the removal
21 of the viaduct was part of the improvement, yes, I would
22 expect to see certain properties, particularly those
23 adjacent to the viaduct would specially benefit from the
24 taking down of the viaduct.

25 **Q. And have you done any analysis of what you would**

1 **expect the special benefits to be to properties in**
2 **Downtown Seattle if we had included the taking down of**
3 **the viaduct?**

4 A. I have not.

5 MR. FILIPINI: I don't think I have any
6 further questions, but I just wanted to be sure.

7 BY MR. FILIPINI:

8 **Q. Just one final one, and I apologize because I**
9 **think you answered this last week. But the -- you have**
10 **not done a special benefit -- final special assessment**
11 **study beyond the feasibility stage; correct?**

12 A. That's correct.

13 MR. FILIPINI: Nothing further. Thank you.

14 HEARING EXAMINER VANCIL: Okay. Thank you.

15 Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. LUTZ:

18 **Q. So during your -- the cross-examination, you**
19 **were talking about the condos and what appears to be an**
20 **assumption that it's a three percent lift between the**
21 **before and the after, characterized it as an assigned**
22 **value rather than market driven.**

23 **And can you explain why you think that is**
24 **assigned rather than market driven from your review of**
25 **Macaulay's report?**

1 A. Because it -- the conclusion is to the
2 three percent. It's not to the -- to what the after
3 value of the property is next to a park. It's -- it's a
4 simple application of that percentage. It's -- he's
5 concluded it's three percent. Three percent is applied
6 and three percent is calculated.

7 **Q. Okay. Now, you mentioned before, you'd looked**
8 **at the -- at least one of the hotel charts showing the**
9 **assumed value -- assumed revenue increase associated**
10 **with food and beverage going from, whatever it was,**
11 **\$3.50 a room in the before to \$3.65 in the after. Could**
12 **you refresh our --**

13 A. I actually was tracking his deposition. I
14 haven't seen that --

15 **Q. You haven't actually seen the chart?**

16 A. I have not seen the chart. I just -- tracking
17 his deposition and how the calculation was -- went from
18 \$35 to 35.61 on the food and beverage. And he described
19 that that was due to 1.75 percent. In fact, I think you
20 were all sitting there figuring it out as you were
21 questioning him.

22 **Q. Right. So there was some -- there was some**
23 **assigned percentage increase that calculated it into his**
24 **hotel formula?**

25 A. Yes.

1 **Q. Now, if, as a matter of being more**
2 **sophisticated, Mr. Macaulay assigns hypothetical income**
3 **increases across room rate, occupancy, food and**
4 **beverage, robe sales and -- and uses that assumed**
5 **increase in revenue and occupancy to predict a**
6 **percentage increase, does that make his analysis any**
7 **different in your report?**

8 MR. FILIPINI: And I would object as both
9 leading and beyond the scope of my cross.

10 MR. LUTZ: That's right on your cross.
11 Exactly what he asked about.

12 MR. FILIPINI: It was a statement made by
13 the witness that didn't respond to my question, that
14 hung out there, that is being followed up on. In fact,
15 this very line of questioning, between the parties at
16 Mr. Macaulay's deposition, was designated as
17 confidential. Which I meant to e-mail you about later.
18 But I believe he's referencing a portion of that.

19 HEARING EXAMINER VANCIL: So you have three
20 objections.

21 MR. FILIPINI: I have three objections.

22 MR. LUTZ: Yeah, and we were going -- we're
23 not going to use the exhibits here and -- and if this is
24 part of the confidential that you've -- you've been
25 using, we need to figure out how to designate the

1 information as confidential -- well, we don't. There's
2 no way you can do it.

3 HEARING EXAMINER VANCIL: There's no
4 confidential at this point.

5 MR. FILIPINI: Yeah, I -- I will just follow
6 up with just a reminder later, and we can talk about it
7 off line.

8 But my -- my objections would be, you know,
9 I don't think it's on cross. And leading.

10 MR. LUTZ: My -- so my question is, as a
11 hypothetical, if --

12 HEARING EXAMINER VANCIL: I understand that
13 you're re-asking the question.

14 MR. LUTZ: I'm re-asking the same question.
15 Withdrawing the earlier version of it.

16 HEARING EXAMINER VANCIL: Rephrasing and
17 re-asking.

18 BY MR. LUTZ:

19 **Q. Rephrasing the question. If, as a**
20 **hypothetical -- because we're not talking about the**
21 **specific exhibit -- Mr. Macaulay is making micro**
22 **assumptions as to percentages, rather than macro**
23 **assumptions as to one percentage, does that increase the**
24 **reliability of his report?**

25 A. It doesn't, because it goes to the same issue.

1 If you're -- if you're making an adjustment to
2 parameters used in the before to calculate the after,
3 then it's the adjustment that you're measuring, not --
4 not the difference.

5 Again, I'm -- it's -- you're concluding as to
6 what the difference is versus measuring the difference.

7 MR. LUTZ: Okay. I have nothing further.

8 HEARING EXAMINER VANCIL: Thank you,
9 Mr. Gibbons.

10 THE WITNESS: Thank you.

11 MR. LUTZ: And -- and my colleague,
12 Mr. Stillwell, is going to take over the questioning of
13 the next witnesses.

14 HEARING EXAMINER VANCIL: Okay.

15 MR. STILLWELL: And for the record, I don't
16 think I was here when we began, I'm Jacob Stillwell,
17 from Perkins Coie, on behalf of objectors.

18 HEARING EXAMINER VANCIL: Thank you.
19 Mr. Stillwell. Please proceed.

20 MR. STILLWELL: We'd like to call
21 Randall Scott.

22 And I have a list of specific objectors in
23 the cases that Mr. Scott will be testifying about that I
24 can enter in as an exhibit. I don't know if you want to
25 swear him in first or if you want to --

1 HEARING EXAMINER VANCIL: I'll go ahead and
2 swear him in and let's address that.

3 Please state your name and spell it for the
4 record.

5 MR. SCOTT: Randall Scott. R-a-n-d-a-l-l.
6 S-c-o-t-t.

7 HEARING EXAMINER VANCIL: And do you swear
8 or affirm that the testimony you provide today is going
9 to be the truth?

10 MR. SCOTT: I do.

11 HEARING EXAMINER VANCIL: Thank you.

12 MR. STILLWELL: For the record, I have here
13 a list of the clients and the case numbers and parcel
14 numbers of the properties that Mr. Randall is testifying
15 on behalf of.

16 HEARING EXAMINER VANCIL: All right. Just
17 for clarity on the transcript and recording record,
18 Mr. Scott is testifying to 423, 416, 412, 410, 411, 421,
19 427, 440, 426, 425 and case number 441.

20 MR. STILLWELL: And then also, before we
21 begin with the direct, the -- his report -- he --
22 Mr. Scott authored a report that's a general review of
23 the -- of the Macaulay study. He did -- each -- each
24 objector has its own copy.

25 It's the same text, but I thought -- for

1 ease of reference, I brought the one that's associated
2 with Century Square retail, which is in case number
3 0423, which is next on our list.

4 For the record, I have a copy of Mr. Scott's
5 report for that client. I'm happy to bring copies each
6 time, but I know the record's getting pretty voluminous.
7 It's the same report for each client and he's only
8 testifying the one time, as well.

9 And so, for the purposes of the record, I
10 have Mr. Scott's report for case number 0423, that we'll
11 be referencing.

12 HEARING EXAMINER VANCIL: And that --
13 similar report, that's associated with each one of the
14 other cases and was submitted with the objection?

15 MR. STILLWELL: Correct.

16 HEARING EXAMINER VANCIL: So that's already
17 in the record for each one of those.

18 MR. STILLWELL: Okay.

19 HEARING EXAMINER VANCIL: If you want to use
20 one -- seems you've brought one as an example.

21 MR. STILLWELL: Yes.

22 HEARING EXAMINER VANCIL: For references as
23 he goes through reports -- it sounds like what we're
24 doing is changing the parcel number and same report.

25 MR. STILLWELL: Exactly.

1 HEARING EXAMINER VANCIL: If you want to
2 introduce one for the record, that would be useful for
3 me to have that to follow along with.

4 MR. STILLWELL: Absolutely, yes.

5 HEARING EXAMINER VANCIL: We'll mark the
6 Randall Scott list of clients as Exhibit 17, and the
7 report as 18.

8 Any objections?

9 MR. FILIPINI: No.

10 HEARING EXAMINER VANCIL: These are
11 admitted. Proceed.

12 MR. STILLWELL: And the last exhibit I have,
13 as well, is Mr. Scott's report relies on Standards 5 and
14 6 of USPAP, and it's cited throughout his report.

15 Again, I thought for ease of reference to
16 allow him to reference USPAP specifics. I have copies,
17 as well, for the record, of Standards 5 and 6 of USPAP.

18 HEARING EXAMINER VANCIL: That will be
19 marked as 19.

20 Any objection?

21 MR. FILIPINI: No objection.

22 HEARING EXAMINER VANCIL: Nineteen is
23 admitted.

24 MR. STILLWELL: All right. Thank you very
25 much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RANDALL SCOTT, witness herein, having been
first duly sworn on oath,
was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. STILLWELL:

Q. Mr. Scott, can you please state your name for the record?

A. I'm Randall Scott.

Q. All right. And can you please discuss your education and training?

A. Yeah. I will be happy to. I did provide a short résumé, bio statement, which I will track with to make that discussion.

MR. STILLWELL: And for the record, that bio is attached to his report. It was included with the objections.

THE WITNESS: Yeah.

MR. STILLWELL: Or the objectors' original filings, and is included in the exhibits today. It's the last page of Mr. Scott's report.

HEARING EXAMINER VANCIL: All right. Again, that's Exhibit 18. Okay.

1 THE WITNESS: So in response to your request
2 that I just talk about my education and experience. So
3 I -- I've been -- I was employed as an appraiser by the
4 assessment authorities, both in Santa Clara County,
5 which is in San Jose, California, and the King County
6 Department of Assessors for many years.

7 From 1983 to -- I mean, I'm not going to go
8 over those dates. But decades. Employed by assessment
9 authorities, essentially producing mass appraisals, when
10 you get right down to it. That's what assessment
11 officers do, by nature. And along -- in 2002, I left
12 the assessors office. I went into a company called
13 Northwest Property Tax. And basically, Northwest
14 Property Tax tries to assist tax payers who think they
15 have a problem with their assessments. And so that's
16 what I've been doing for the last, if you will,
17 18 years.

18 BY MR. STILLWELL:

19 **Q. Thank you.**

20 A. Among other things, I'm widely known in the
21 State of Washington as a person that was responsible for
22 teaching people how to do the job. So I listed that, as
23 I taught, in particular, income valuation classes.

24 I also mention here that I was -- I hold -- I'm
25 not trying to polish up my -- my ribbons, but this IAAO

1 presidential citation. IAAO, International Association
2 of Assessing Officers, one of the constituent members of
3 the appraisal foundation which promulgates the uniform
4 standards of professional appraisal practice, along with
5 a lot -- other appraisal organizations.

6 But I received a citation for service while a
7 member of the IAAO Technical Standards Committee. And
8 once in a while in case law, you will read courts in
9 Washington, particularly Vellus v. Keogh, which some
10 people recall, which is the one that threw out the
11 original Eyman tax limitation statute.

12 And they cite approvingly, as guidance, these
13 technical standards. So there are technical standards
14 on what do you do about contaminated property; what you
15 do about so-called ratio studies. Ratio studies becomes
16 important because that is an element.

17 So my -- I do believe that my training and
18 experience make me, essentially, an expert on mass
19 appraisal. And that is why I think I was asked to
20 answer this question about this particular property. I
21 list some --

22 **Q. Thank you.**

23 **Mr. Scott, we'll get to it.**

24 A. Yeah.

25 **Q. Thank you.**

1 **I just want to continue on your background**
2 **briefly.**

3 **What types of properties do you evaluate in your**
4 **current position at Northwest Properties?**

5 A. Pretty much what anybody brings to the firm.
6 We've done hotels. We've done paper mills. We've done
7 apartment buildings, vacant land, office buildings.
8 Pretty much anything you can think of.

9 **Q. The types of property -- are the types of**
10 **properties that you're familiar with the types**
11 **represented by the clients --**

12 A. Yes.

13 **Q. -- in this case?**

14 **And then so the -- turning now to Exhibit 18,**
15 **you've titled it an "Appraisal Review."**

16 **What exactly is an appraisal review?**

17 A. An appraisal review is where someone who is a
18 user of an appraisal report. That would be the client,
19 let's say, or the -- or someone else, who's a user,
20 wants to know if they think it's a credible basis for a
21 decision that they might make.

22 So, for instance, a classic case would be how
23 much is it worth? The appraiser says, it's worth
24 \$10 million. I should pay \$10 million, and I can feel
25 fine about that. It's all going to be good.

1 The appraisal review arises when someone wants
2 to know, what do you think about this report? Is it
3 credible? And at the end of the day, the mission of the
4 appraisal review as defined in standard form of USPAP,
5 is to evaluate the appraisal in question and the report
6 that it is communicated to you by to answer the
7 question, is it credible or not.

8 **Q. And did you -- did you prepare an appraisal**
9 **review of the -- Macaulay's mass appraisals?**

10 A. I did.

11 **Q. Is that Exhibit 18?**

12 A. Yes.

13 **Q. Okay. And before we move to the reports**
14 **specifically, you mentioned before USPAP. In what --**
15 **again, can you remind us what that's an acronym for?**

16 A. Uniform Standards Professional Practice, which
17 are promulgated by the appraisal foundation which
18 existed before it was mandated by government statute.
19 But basically as, a result of problems with appraisals
20 that were identified, it became enshrined in statute.
21 So now, if you're going to appraise a property that's
22 involved in a so called federally related transaction,
23 one must comply with USPAP.

24 **Q. So what is the relationship between USPAP and**
25 **conducting an appraisal review?**

1 A. USPAP has standards which define how appraisals
2 are to be conducted and how they're to be reported.

3 Appraisal Standard 3 is the standard that --
4 which governs how would you review that appraisal. If
5 you -- to make it as simple as I can, appraisers are
6 trained in classes and school and on the job about how
7 to do what they do.

8 And there are accepted principles that are
9 considered desirable and other things that are -- you're
10 not supposed to do. And this USPAP, the standards
11 basically say, now that you've been trained what to do,
12 here -- we're going to write it down and that is the
13 rule, you have to comply with this. You must do this.

14 **Q. Are there --**

15 A. Let me just say. The ultimate goal of the
16 appraisal standards is to provide both users and
17 producers guidance about what should be there so that
18 they will have a better ability to give credibility to
19 those results.

20 **Q. All right. Thank you.**

21 **Are there specific USPAP requirements with**
22 **regard to mass appraisals?**

23 A. Yes, there are.

24 **Q. What are they?**

25 A. The -- the standards for mass appraisal are

1 rendered currently in standard five.

2 Before 2018 -- 2019, they were in Standard 6.

3 So Standard 5 now -- and this is the document that I am
4 looking at right now. It is titled "Mass Appraisal,
5 Development."

6 And then there's Standard 6, "Mass Appraisal,
7 Reporting."

8 These used to be one standard. They broke them
9 apart to make symmetry with the single family -- I mean,
10 single property appraisal standard 1, for the appraisal
11 standard 2 for the report. So you have -- now we have a
12 -- a report and a development.

13 What's -- what's most important about Standard
14 5, which is the -- the mass appraisal development
15 standard, is that we have to know, what is a mass
16 appraisal. And firstly, what differentiates a mass
17 appraisal from a single property appraisal.

18 I hear many people who have been buying
19 appraisals all their life saying, I don't know, what is
20 mass appraisal.

21 Mass appraisal is defined as valuing a universe
22 of properties, not just one, using standardized methods,
23 such that those methods can be tested.

24 And in Standard 5, we have the -- the -- the
25 rule book for doing that.

1 I would point out that, if you haven't done the
2 work in such a way that it can be tested and it can be
3 reported so that people can understand and find it
4 believable, I think once, that tends towards reducing
5 the credibility of the work in question.

6 **Q. Thank you.**

7 I would direct you to -- and I apologize, the
8 report itself is not numbered. But on the --
9 physically, the third page at the very top, it begins
10 "Extraordinary assumptions and hypothetical conditions."
11 Midway down that page, there's a list of several factors
12 that the mass appraisal must include.

13 **Could you discuss those seven factors?**

14 A. The -- the -- the seven factors are -- are -- so
15 I'm actually reading now from what I've written. It
16 says "A mass appraisal includes: One, identifying
17 properties to be praised; two, defining margin area of
18 consistent behavior that applies to properties; three,
19 identifying characteristics, supply and demand, that
20 affect the creation of value in that market area; four,
21 developing a model structure that reflects the
22 relationship among the characteristics affecting value
23 in the market area; five, calibrating the model
24 structure to determine the contribution of the
25 individual characteristics affecting value; six,

1 applying the conclusions reflected in the model to the
2 characteristics of the properties being appraised; and
3 seven, reviewing the mass appraisal results."

4 **Q. Thank you.**

5 **Were there any of these factors that you felt --**
6 **or how did the Macaulay study, in your view, implement**
7 **these seven factors?**

8 A. I don't -- my review -- you know, large
9 document. My review says that, yes, we know about the
10 properties that we're talking about. We know about the
11 market area.

12 What we don't have, in my view, is a model
13 structure that expresses the relationship between the
14 characteristics that affect value. And we also don't --
15 that's -- that would be number four. And we don't have
16 number five, calibrating the model structure to
17 determine the contribution of the individual
18 characteristics affecting the value. That would be
19 essentially the -- the value estimation component of the
20 process.

21 And then number six, which is -- now that you've
22 got that model, running it out to all the properties
23 using their characteristics.

24 And number seven, reviewing the mass appraisal
25 results. I think it's in four and five that we don't

1 see that.

2 I also -- that's with respect to development.

3 The -- go ahead. I'll let you ask some
4 questions.

5 So I don't see that we have a model that
6 specified, that I can understand and point to somebody
7 and say, well, here's how this value came to be. And I
8 don't see that the model, then, as specified was
9 calibrated.

10 By calibration, what I mean is, let's say that I
11 say my model is land plus building equals value. Well,
12 bigger land, bigger building, well, how many dollars per
13 square foot of land? How many dollars per square foot
14 of building? That's the calibration component. The
15 model is when you said land and building, the
16 calibration is when you put numbers in front of those.

17 **Q. And so to -- to stay on the model for a moment,**
18 **so how -- give an example, please, of how USPAP would**
19 **recommend an appraiser develop a proper model structure.**
20 **What would that look like?**

21 A. Well, you know -- and of course, that's --
22 that's a whole world of expertise that's associated with
23 that. But basically, if you read -- if you tracked
24 along with the -- with the steps of what goes into a
25 mass appraisal, you know the property that you're

1 talking about. You've already figured out areas --
2 because you might wind up with having different models
3 in different places and different models for different
4 property types and so forth. That's all -- that's all
5 fine. That's all imaginable.

6 But you -- at some point, you have to rationally
7 specify what is going to create value, and then you have
8 to take -- that would be in line with if one -- one
9 would expect a bigger property to sell for more. That's
10 an expectation.

11 The calibration development is when you take the
12 data that you have, apply it to the information sources
13 that you consider valuable, which could be sales of
14 properties. But I would also point out that it could
15 also be a single property appraisal; right?

16 So -- just if this doesn't take too much of your
17 time. The State of Washington, for instance conducts
18 what they call ratio studies of assessors' performance.
19 And what they will do is that they'll identify a strata.
20 And if they don't find enough sold properties in that
21 strata, they will go out and appraise a property and put
22 that into the sample and now compare their model results
23 with that appraisal. That -- that is where most of the
24 hard work gets done.

25 Because we all -- it makes sense that newer is

1 probably better than older, bigger is better than small,
2 more intense zoning more valuable than less intense
3 zoning. That's all -- I mean, it's a huge job, but it's
4 doable.

5 **Q. So what -- in the Macaulay study particularly,**
6 **what were your observations with regard to the model**
7 **structure?**

8 A. I didn't see model structure. I saw a lot of
9 information about economic conditions in Seattle and --
10 and a lot of discussion of what -- what's happened --
11 what was observed in other places, and so forth and so
12 on.

13 But when I looked at it from the standpoint of
14 this is a Standard 3 appraisal of a report that's in
15 front of me, while I am not expected to estimate my own
16 value for any of these properties, the only question is,
17 is the report itself credible? I don't find a model.
18 There may be one there.

19 It may be locked up in some Excel spreadsheet
20 cell that I don't have access to and won't, and don't
21 need to. I just don't see it.

22 The requirement, of course, is that you express
23 the model.

24 **Q. And so is that in the USPAP requirements, that a**
25 **model is expressed?**

1 A. Yes. That's exactly what I say here. Number --
2 number -- when I say number four on this list of --
3 what's -- you have to develop a model structure that
4 reflects the relationship among the characteristics
5 affecting value in the market area.

6 So just for -- just for -- just talking about
7 serendipity, one could have said, what about -- how many
8 trees are there within a half mile or two blocks of
9 the -- of the sold property.

10 You might say that that has an affect on value.
11 You can estimate using quantitative data, that kind of a
12 statement, and you can find out that you can support
13 that conclusion or not. That would be called
14 calibration. Because in the model structure, you could
15 have said the neighborhood quality associated with these
16 types of improvements, whatever they might be, swing
17 sets, ramps, skateboard parks, that is a -- that is a
18 characteristic that we can then estimate the value for
19 it.

20 **Q. And I want to get to calibration in a moment.**

21 **But what are the effects of -- in the whole**
22 **appraisal analysis, what is the effect of not specifying**
23 **a model structure at the -- at the outset?**

24 A. Well, my -- my conclusion is, if you don't have
25 a model, you don't have a mass appraisal. If you don't

1 have a mass appraisal, and you're calling it a mass
2 appraisal, you don't have an appraisal. Basically.

3 **Q. And so what is then -- so -- and you started**
4 **mentioning about calibration.**

5 **What's the relationship between calibrating the**
6 **model and specifying a model at the -- at the beginning?**

7 A. Well, like I say, we can expect that a bigger
8 house will sell for more than a smaller house; right?
9 And we can measure that in square feet, or we can
10 measure that in bedrooms and bathrooms, or whatever we
11 want.

12 So specifying that, we would say, I believe that
13 the value of the property is going to be some expression
14 that includes how many bedrooms there are, how
15 much of -- how many -- how many degrees of view do we
16 have of the waterfront, how many stories are there, how
17 big is the lot. Those are all in there. Then you take
18 the data to calibrate to say, well, each one of those
19 characteristics, how much do they add to the total.
20 That's the calibration.

21 **Q. And so how did the Macaulay study then calibrate**
22 **the model in -- in the report?**

23 A. I don't know that one can tell. I could not
24 tell. What I -- what I observed was that the remarks
25 were -- we used a variety of methods and here's the

1 output. That's what I saw; right?

2 As opposed to two plus two is equal to five,
3 which is wrong; right? I don't see the two plus two
4 equals four.

5 So I didn't -- my -- my review was that steps
6 four and five were not conducted and, therefore, I
7 really can't judge whether he had a model in his mind.

8 **Q. And does that --**

9 A. I shouldn't have to.

10 **Q. And does that ultimate conclusion that you just**
11 **stated, about not being able to judge the report, does**
12 **that get at the purpose behind USPAP?**

13 A. In my view it does, because the function of
14 USPAP was to provide sufficient guidance that, if
15 complied with, would allow the users of appraisal
16 reports to have confidence in the results presented
17 there.

18 Lacking compliance with the guidance, one
19 basically doesn't produce credible results. And
20 therefore, you -- you get heat rather than light.

21 **Q. Thank you. Now, the second to last page of your**
22 **report, right in front of your -- your résumé that we**
23 **were discussing earlier, is -- discusses the Crocker**
24 **Hotel model demonstration?**

25 A. Right.

1 **Q. Can you please discuss that and why you included**
2 **that in the report?**

3 A. Well, you know, I included that because -- you
4 know, the real question is -- in a world where most
5 people don't know what a mass appraisal is and don't
6 know what a mass appraisal model is, I thought, well, it
7 would be really good to give them an example of what I
8 mean; right? And so the Crocker -- it's Crocker Liu,
9 he's a professor of real estate at Cornell hotel school.
10 So he published this national model that he's estimated
11 for hotel values.

12 And -- and if you look at the -- and it's
13 very -- it's very tedious to look at it. But what you
14 can see there is he's got a model structure, he wants to
15 know, you know, how many -- how many stories is it, when
16 was it built? And so it -- all these -- these are all
17 part of the model things. You'd think these would have
18 relationships to value, and then he's estimated the
19 values all over the country using the available sales
20 and that -- and that's the calibration. And that
21 provides a coefficient.

22 So you can see in his little chart he's got the
23 coefficients laid down, you put in the parameters. I
24 call it parameters, the measure, you know, how many
25 stories. You put that in and you're going to get a

1 number at the end. It's going to come out of there.

2 And every time you do it, it will come out with the same
3 number. And if you change the characteristics, you'll
4 get a different number; right?

5 **Q. And so is -- and so are you saying that that is**
6 **an example of a properly applied methodology and**
7 **calibration?**

8 A. Correct. I don't claim that this document right
9 here constitutes a fully reported mass appraisal model,
10 because that wasn't the point. I just wanted to show
11 the difference between the parameters in the model
12 structure and the coefficients estimated in the
13 calibration process.

14 **Q. So is it -- would it be fair, then, to**
15 **characterize this example as just simply showing how --**
16 **how a properly -- a properly demonstrated model is**
17 **calibrated when all parts are operating --**

18 A. Yes.

19 **Q. -- correctly?**

20 A. Correct.

21 **Q. Could you please discuss what that would look**
22 **like in a mass appraisal?**

23 A. Actually, it would look very similar to that,
24 except that you would very likely have a different model
25 for -- for different property types.

1 Notice that one of the requirements is you have
2 to define -- this is back to .2 on that seven-point
3 list. You have to define the market area of consistent
4 behavior, and you have to identify the characters that
5 affect the creation of value in that large area.

6 Well, so if I'm talking about hotels, that's not
7 necessarily the same thing as self-storage, not
8 necessarily the same thing as parking lots. Not --
9 right, you're going to come up with different
10 characteristics. So you might wind up with different
11 models; right?

12 But for an -- for a perfectly good example, what
13 one could have done if the job was to ask the question
14 how good a model does Crocker Liu have, you could have
15 taken all the hotel sells in your area, fed them through
16 his model, and then -- and then you -- that would have
17 been the point where you were reviewing the mass
18 appraisal results. And then you would see how close did
19 we get with -- how close did that model get to the sales
20 that are actually reflected; right?

21 Normally speaking, that's the goal of the
22 assessor's office. That's the goal of the mass
23 appraisal. But mass appraisal does not have to be for
24 tax purposes. It's for any universe -- in this case, a
25 perfectly good application area for mass appraisal

1 techniques and methodology. I personally don't see that
2 it was done the way I would have thought would have been
3 appropriate.

4 Because at the end of the -- for instance, if
5 somebody ever wanted to go home on their own computer
6 and just see a mass appraisal report, the King County
7 Assessor puts out one report for every area every year.
8 And one of the things that's very important is Item
9 No. 7, reviewing the mass appraisal results. The -- the
10 summary result, the one that really makes the difference
11 is where they compare the results of their model output
12 with the sales that are out there. Because the State of
13 Washington wants you to be at a hundred percent.

14 They will tolerate different numbers but not too
15 far away from a hundred percent. So you have to show
16 them that, by changing these values the way that we did
17 from last year to this year, now our ratio, if you will,
18 went from 80 percent to 95 percent. So that's a --
19 that's a proper movement. And you can see it. And you
20 can see in the equation that expressed that number in
21 the first place how you got there.

22 Now, if it came out -- quite frankly, when I
23 worked for the King County Assessor's Office many, many
24 years ago, one of my first jobs was valuing all the
25 major office buildings in downtown Seattle. So I had a

1 spreadsheet and -- I had a spreadsheet and I categorized
2 each of the major offices into about five or six
3 different types. And then I had a table. And I said,
4 if you're in type one, here is your rent, here's your
5 vacancy, here's your operating expense, here's your cap
6 rate. And that gave every one of those properties a
7 value.

8 And if I didn't like the way -- and that whole
9 spreadsheet is tied to a graph. Think of going to the
10 rifle range and trying to zero the weapon, and you find
11 out that your -- all your hits are down here. They're
12 consistently off to the lower right. Well, you've got
13 to move it up to the center, otherwise you haven't
14 passed the test; right?

15 **Q. So are you -- and so is your testimony, then,**
16 **that when you're developing a model, if you don't first**
17 **have -- if the model that you're using is not specified**
18 **or you're just not using one to begin with, then you're**
19 **not able to calibrate it properly because you're not**
20 **able to put in those -- those inputs into your model?**

21 A. Well, yeah, my view is that if you haven't
22 specified the model, then I, as a user of your report,
23 don't really know how you got your value.

24 **Q. And I think that's the important point.**

25 **So my next question, then, is how -- what**

1 **relevance is that conclusion? So your testimony is, it**
2 **sounds like you're unable to test the model used in the**
3 **Macaulay study. What impact does that have on these**
4 **assessments? Why does that matter?**

5 A. In my personal view, it means that the study
6 that put these values out is not credible.

7 In -- in my personal opinion, a mass appraisal
8 does not exist here. And therefore, what we have is a
9 lot of pages about what it's going to be like when it's
10 all done and how pretty that is, and so forth and so on.
11 And then we have a list of values. But I don't know how
12 those values came about. And I get the feeling that
13 maybe nobody else does either.

14 Which should not be. You have to have an
15 appraisal. If you don't have an appraisal, all you have
16 is a list of numbers. Because it's the credibility
17 that's everything.

18 MR. STILLWELL: I have no further questions.
19 Thank you.

20 HEARING EXAMINER VANCIL: Cross?

21 MS. THOMPSON: Good afternoon.

22 CROSS-EXAMINATION

23 BY MS. THOMPSON:

24 **Q. So you said that you've been working with**
25 **Northwest Property Tax consultants for 18 years; is that**

1 **right?**

2 A. Yes, ma'am.

3 **Q. And what kind of work does your firm do?**

4 A. We primarily handle disputes between taxpayers,
5 our clients and assessors as to value.

6 **Q. So in that role, are the people working for your
7 firm all licensed appraisers?**

8 A. Not generally, no.

9 **Q. Are you yourself a licensed appraiser?**

10 A. Not now.

11 **Q. When was the last time you were a licensed
12 appraiser?**

13 A. You know, I'd have to go back and see. It was
14 many -- it's been many years. I -- I was a certified
15 general appraiser when I was working for the assessor's
16 office. Once I left the assessor's office -- to --
17 let's just go to the -- let me just be as blunt with you
18 as I can. In the work that we do, most of the time
19 we're not going to a toe to toe, I need a certified
20 appraisal to get this job done. Most of our work is
21 simply carrying water between our clients and the
22 assessor, saying, you know, here's something you didn't
23 know about.

24 So -- and here's the other thing, this is
25 crucial. Substantial amount of our work is paid for by

1 contingent fees. That's not consistent. So as long as
2 I was a certified appraiser the ethics clause of the --
3 of the USPAP says, do not mislead anybody as to your
4 role; right?

5 Around the country, there are many people that
6 are brokers and appraisers. Two different hats, same
7 person, small town.

8 So the point is, is that we -- as long as I was
9 a certified appraiser, I had to start all my
10 presentations by, I'm not here as an appraiser today,
11 I'm here helping my client here, get you to understand
12 his position; right?

13 So you're in that -- at which point, why am I
14 paying to be a certified appraiser? So I haven't been
15 a -- I'd have to go back and look at when that
16 terminated. It's been many years. 15.

17 **Q. And so do you hold any professional licenses at**
18 **this point in time?**

19 A. No, I don't.

20 **Q. Do you hold any professional designations?**

21 A. No.

22 **Q. So that would include an MIA? You don't have**
23 **an --**

24 A. I am not an MAI.

25 **Q. Or MAI. Apologies.**

1 A. In my -- in the assessment world, CAE is the
2 typical designation that counts. Certified assessment
3 evaluator. And I am not a certified assessment
4 evaluator.

5 **Q. And that CAE designation, is that through the**
6 **State of Washington?**

7 A. No, actually, that is just like the MAI is a
8 designation from the appraisal institute, that CAE is a
9 designation that comes from the IAAO.

10 **Q. And the IAAO relates -- that's only relating to**
11 **government appraisers; is that right?**

12 A. Nongovernment appraisers are allowed to be
13 associate members of the IAAO.

14 **Q. But it is a professional membership organization**
15 **of government assessment --**

16 A. Yes, ma'am.

17 **Q. -- appraisers?**

18 **Does your practice involve providing expert**
19 **testimony?**

20 A. I consider that -- when I'm appearing in front
21 of a board, which is where we normally would testify
22 under oath, I consider that I am an expert in these
23 matters. I've been working most of these property types
24 for decades. I've been an expert witness in the King
25 County Superior Court. I've been a subject matter in

1 cases that went to the Court of Appeals.

2 I think most people in this state that know me
3 and of me, recognize me as an expert in these matters.

4 **Q. Have you ever testified as an expert in a LID**
5 **hearing before?**

6 A. In a what?

7 **Q. In a LID hearing?**

8 A. No.

9 **Q. Before today?**

10 A. No.

11 **Q. You mentioned earlier that a lot of the work**
12 **your firm does is on a contingency fee basis.**

13 A. Mm-hmm.

14 **Q. Are you working on a contingency fee basis in**
15 **this matter?**

16 A. No, no, I'm not.

17 **Q. Are you working on an hourly rate?**

18 A. Yes.

19 **Q. What's that -- that hourly rate?**

20 A. To be honest, I'm not quite sure. It's
21 probably --

22 MR. STILLWELL: Objection. Relevance.

23 THE WITNESS: It -- I don't know.

24 Whatever -- whatever's in the --

25 HEARING EXAMINER VANCIL: Please stop.

1 THE WITNESS: Whatever's in the paperwork.

2 HEARING EXAMINER VANCIL: Relevance.

3 MS. THOMPSON: This is a typical question
4 asked of expert witnesses. It goes to bias.

5 HEARING EXAMINER VANCIL: Overruled.

6 MS. THOMPSON: You may answer.

7 HEARING EXAMINER VANCIL: I think he already
8 did.

9 THE WITNESS: I think what I said is I'm not
10 sure, to be -- to be perfectly blunt. I retired at the
11 end of December, and so I am not writing these
12 proposals. I'm just -- I was asked to do this, and I'm
13 here. So presently, my compensation, personal
14 compensation would be the salary I'm getting paid by the
15 company. Which has nothing to do with this particular
16 case. So the company is billing something. I don't
17 know what it is; I don't really care. But I am being
18 paid to be here, yeah.

19 BY MS. THOMPSON:

20 **Q. So today you're testifying about an appraisal**
21 **review that you prepared in this matter?**

22 A. (Witness nods head.)

23 **Q. And have you prepared appraisal reviews before?**

24 A. Yes.

25 **Q. Can you give me an estimate about how many**

1 **you've prepared?**

2 A. I'm trying to -- I'm trying to think about how
3 to characterize the answer perfect --

4 The -- the number of times when I've been asked
5 to prepare a Standard 3 review appraisal and provide a
6 copy of that is limited.

7 Most of our reviews are, we're looking at the
8 assessment and saying, this one's fine, this one's fine,
9 this one's fine, this one's fine. So that is -- and at
10 that for that 18 years that I was working, I mean,
11 that's going on three, four, five, 600 times a year.

12 But -- but my review is -- remember the intended
13 use and the intended user, I'm telling my client, you're
14 fine. Pay the taxes. Go on with your life. Right?
15 So I -- I mean, I've been doing that.

16 But producing documents like this, two.

17 **Q. And were either of those two appraisal reviews**
18 **related to a special benefit study?**

19 A. No.

20 **Q. Have you ever provided any type of review of a**
21 **special benefit study?**

22 A. I provided a verbal -- on a special benefits
23 study in five -- many years ago, for my client that was
24 concerned about the sewer LID there in Fife. And I
25 looked at that and told them verbally, we're done.

1 **Q. Have you ever been retained during your time in**
2 **private practice to prepare a mass appraisal report?**

3 A. No.

4 **Q. Have you ever been retained to prepare a special**
5 **benefit study for a local improvement district?**

6 A. No.

7 **Q. When were you retained by the property owners to**
8 **prepare the appraisal review?**

9 A. I believe that was back in December 2019.

10 **Q. And what was the scope of your engagement?**

11 A. A review without value conclusion of the
12 Macaulay report. That was the scope.

13 **Q. And was that specific to Standard 3 of the**
14 **USPAP?**

15 A. Yes, ma'am.

16 **Q. What information did you review to prepare your**
17 **appraisal review?**

18 A. I looked at Mr. -- at the studies that I was
19 provided, the final report and its addenda.

20 The rest of it is -- I mean, I just pulled
21 Crocker, I had it in my head.

22 So really, it's 30 years and reading the report.

23 **Q. Okay. Do you recall about how much time you**
24 **spent preparing the appraisal review?**

25 A. Oh, probably -- probably a week. I mean, you

1 know, the Macaulay document is big. So I'm going to say
2 a week.

3 **Q. Did anyone assist you --**

4 A. No.

5 **Q. -- in preparing --**

6 **So earlier in your testimony on direct, I heard**
7 **you say that you applied Standard 4 of the USPAP, was**
8 **that -- did you mean Standard 3?**

9 A. Standard 4 is the -- Standard 3 is the
10 development of the review, Standard 4 is the reporting
11 of it. They've got this -- they've got this symmetry
12 going on.

13 **Q. Okay. So similar to the Standard 5 and Standard**
14 **6?**

15 A. Yes, ma'am.

16 **Q. There's one that governs how you actually do the**
17 **review and one that governs what should be in the**
18 **report?**

19 A. Yes, ma'am.

20 **Q. You also mentioned that the USPAP standards are**
21 **tools that are used to provide guidance to, for example,**
22 **your customers?**

23 A. Mm-hmm.

24 **Q. And the question I have is, if an appraisal that**
25 **you've reviewed doesn't satisfy, to your estimation, the**

1 **USPAP standards, what legal effect does that have on the**
2 **appraisal?**

3 A. Well, I'm not sure. That's a legal question.

4 I'm not a lawyer. What I am saying is that -- is that
5 if -- so yeah, I'm not -- I'm not -- I don't think I'm
6 qualified to answer that question.

7 I think that what the point of saying that an
8 appraisal -- I mean, I can give you an example, if you
9 don't mind.

10 I did a review appraisal of an appraisal of a
11 paper mill in Longview. And -- and I concluded that it
12 was not a credible basis for valuation of the -- of the
13 paper mill. And as a result, the lawsuit in Superior
14 Court went away; right? Because they realized that,
15 well, we're going to need a new appraisal. So that's
16 not a legal effect. That was a -- that was a practical
17 outcome.

18 My -- my concept of credibility is that, if a
19 document claims to be something and it is found not to
20 be that -- and I'm going to maintain pretty clearly that
21 my review shows that the Macaulay document does not
22 report an adequate mass appraisal and it doesn't report
23 it in an appropriate manner. In particular, it doesn't
24 really give us any testing whatsoever.

25 I would say that the document doesn't count as

1 an appraisal. That's just me.

2 **Q. So let me ask you this question a different way.**

3 **You've identified the USPAP standards as the**
4 **ruler that you've judged the ABS report against; is that**
5 **correct?**

6 A. Yes.

7 **Q. Have you used any other standards in evaluating**
8 **the report?**

9 A. No.

10 **Q. And the USPAP standards, those are viewed in the**
11 **industry as guidance for how appraisal reports should be**
12 **prepared?**

13 A. Mandatory guidance.

14 **Q. Mandatory guidance?**

15 A. That's why it has lots of words like "must" as
16 opposed to "may." There's some "mays" in there.

17 **Q. So I want to move to your appraisal review --**

18 A. I should back up. It's mandatory when required.

19 So federally related transactions have to be
20 done according to USPAP. Others can be done because of
21 an agreement between the client, that that's
22 appropriate.

23 But most of us would have the view that it's a
24 set of minimum standards that should be complied with.
25 If you don't, you're not up to professional stuff.

1 That's it. So.

2 **Q. Okay. So they're --**

3 A. So they're not laws.

4 **Q. They're not laws?**

5 A. No.

6 **Q. And to your knowledge, there's no legal**
7 **requirement in the state context that would provide them**
8 **with legal effect?**

9 A. The -- with respect -- that -- would have to be
10 qualified in the State of Washington, the statute does
11 require that assessors work in accordance with USPAP.
12 That's a requirement.

13 **Q. All -- all assessors?**

14 A. Yes.

15 **Q. Private assessors? Or state assessors?**

16 A. Well, to me assessors means county assessors.

17 **Q. Okay. County assessors. So a private**
18 **appraiser would not --**

19 A. Not -- no.

20 **Q. Please wait for me to finish before you answer**
21 **so that the court reporter can get us all.**

22 A. I'll try not to.

23 **Q. Okay. So I want to talk about the seven**
24 **elements of a mass appraisal that you identify in your**
25 **appraisal review.**

1 **You stated that, in your opinion, numbers four**
2 **and five are lacking in the ABS study; is that right?**

3 A. Yes.

4 **Q. So I just want to confirm that of the remaining**
5 **five elements, you found no faults?**

6 A. Well, it -- it's in -- it's in steps four and
7 five that I find the -- the lack of provision. So I --
8 I can't identify a model structure and therefore, if I
9 can't identify a model structure, I can't identify the
10 calibration process. And that, of course, means that
11 six, applying to conclusions reflected in that model to
12 the characteristics being appraised.

13 Now, we've got a list of values, but I don't see
14 that they're the applied conclusions of the model, that
15 I can see. So I don't think that six has been applied
16 properly either. And then seven, I think, is actually
17 lacking.

18 That reviewing of the mass appraisal results.
19 That's an essential part of the definition. Because the
20 point of the mass appraisal is it needs to be put
21 together in such a way so that somebody else can verify
22 that it makes sense. Usually this is done with
23 statistical methods.

24 **Q. And did I -- I want to make sure I understood**
25 **your testimony before, that you agree that a mass**

1 **appraisal approach is appropriate for a local**
2 **improvement district like the one at issue here?**

3 A. I don't know how else one would do it. Unless
4 you were going to hire 6,000 single property appraisals.
5 That's the point. If you have to value a whole bunch of
6 them, mass appraisal is the way to go. If you only have
7 to do one or two or -- or 30, Standard 1.

8 **Q. So we've discussed Standard 5 and Standard 6 of**
9 **the USPAP; correct? Yes?**

10 A. Yes, ma'am.

11 **Q. And Standard 5 provides guidance for creating**
12 **mass appraisal; is that right?**

13 A. Yes, ma'am.

14 **Q. And Standard 6 is relating to the type of**
15 **information that needs to appear in the actual mass**
16 **appraisal report that's produced as a result of that --**
17 **that Standard 5 process?**

18 A. Yes, ma'am.

19 **Q. So -- and you concluded that ABS failed to**
20 **comply with both Standard 5 and Standard 6?**

21 A. The -- well, my view there would be that the
22 Standard 6 failures are because the element to be
23 reported wasn't developed in Standard 5.

24 So for instance, if you -- if you were going to
25 look at -- I'm calling attention, now, to the -- I'm

1 looking at item -- on page 39 of Standard 6, at line
2 number 1250. It's -- you've got the item M.

3 Well, saying there identify -- if you're there.

4 **Q. Yes.**

5 A. It's saying -- I can just read what it says. It
6 says "Identify the appraisal performance test used and
7 the performance measures that attain."

8 That's an item in Standard 6, which is reporting
9 the work that you did in Standard 5. If you didn't do
10 it in five, you're not going to report it in six. So
11 it's a lick on both.

12 **Q. Okay. So I think I follow what you're saying.**
13 **You're saying that Standard 5 is laying out the steps**
14 **that you should be taking in performing a mass**
15 **appraisal. And Standard 6 corresponds by requiring that**
16 **you state certain aspects of your review -- excuse me,**
17 **your appraisal, so that there's essentially a record of**
18 **the process that you performed?**

19 A. If I say yes, is that good enough?

20 I think -- I think that's what I'm saying.

21 Yeah. And what -- what you have -- the reason that
22 Standard 6 is -- is crucial -- because what you could
23 have just said is -- at the bottom of five, you say
24 report all this.

25 But Standard 6 uses numbers -- words like state

1 or summarize. And those have different meanings, of
2 course, within the profession. Summarize is bigger than
3 stating. Identify; right?

4 So for instance, if I'm supposed to know what
5 the performance measure is, but I didn't calculate it,
6 therefore, I can't report it -- I'm sorry, I'm saying
7 the same thing over again, aren't I?

8 **Q. No, that's fine. That makes sense to me.**

9 **My question is: You've stated conclusions in**
10 **your appraisal review with respect to compliance with**
11 **Standard 4 -- or sorry, Standard 5 and Standard 6;**
12 **correct?**

13 A. Yes, ma'am.

14 **Q. And with respect to Standard 6, you have the ABS**
15 **study to look at and it sounds like you reviewed that**
16 **and the addenda and, in your opinion, you didn't**
17 **identify -- or you could not locate the identification**
18 **of a mass appraisal model that was used or the**
19 **calibration that, you know, would have followed that --**
20 **with that model.**

21 **And those are the reasons why, in your opinion,**
22 **Standard 6 hasn't been complied with?**

23 A. You forgot the stating and analyzing
24 performance, which is crucial.

25 **Q. Okay.**

1 A. Because quite frankly, if one had a model, but
2 one didn't analyze its performance, you're not done.
3 And so -- so I'm not quite sure if I'm answering the
4 question that you're putting to me, ma'am.

5 But what I think is, you're saying is it -- is
6 it failure to comply with six and failure to comply with
7 five, and are they synonymous, and the answer is not
8 necessarily; right? Because it -- what -- the fact that
9 I could not find a model anywhere or a test doesn't mean
10 that there isn't one.

11 **Q. And that's the point I'm getting to.**

12 **Is that your conclusion about compliance with**
13 **Standard 5 is based on the lack of, in your opinion,**
14 **evidence of the mass appraisal steps in the report**
15 **itself?**

16 A. Correct.

17 **Q. So would your opinion about compliance with**
18 **Standard 5 change if ABS actually did perform the**
19 **elements that you've identified?**

20 A. That would be a new assignment. Because it
21 would be a new report, wouldn't it?

22 **Q. But if you -- if they had prepared to the**
23 **specifications of Standard 5, a mass appraisal, then**
24 **your conclusion about compliance with Standard 6 would**
25 **change, would it not?**

1 A. Absolutely. Right.

2 **Q. You also conclude in your appraisal review that**
3 **the study isn't credible for estimating or allocating**
4 **special benefits; is that correct?**

5 A. Yes.

6 **Q. Would that conclusion change if ABS had prepared**
7 **a mass appraisal in accordance with Standard 5?**

8 A. If -- if the -- if -- if Standard 5 was complied
9 with, and Standard 6 report so that -- so that we could
10 read it and see it, then that particular review
11 conclusion could be altered, yes.

12 **Q. Now, I want to turn just back to that Crocker**
13 **Hotel model demonstration.**

14 **So you stated earlier that this is an example of**
15 **a model that is appropriate to use in a mass appraisal;**
16 **is that right?**

17 A. Appropriate to use. I think it's an example of
18 the calibrated model that one would find in a mass
19 appraisal, yes. And so, yeah, it's appropriate.

20 **Q. So if ABS had, in fact, used a model like the**
21 **Crocker example here, would you -- would your opinion be**
22 **altered about whether they used an appropriate mass**
23 **appraisal model?**

24 A. That hypothetical, yes. In other words, if --
25 if the -- in other words, if you gave me a report that

1 had a model and tested it and showed it to me so that I
2 could read it and note and not have to read your mind
3 about what you did to get there, then my review would
4 have come out different. But that wasn't what I was
5 looking at.

6 So I think the answer to your question, ma'am,
7 is yes.

8 **Q. So going back to Standard 6. If ABS had**
9 **complied with Standard 6, would that affect your opinion**
10 **about the credibility of the study to support the**
11 **estimation and assessment of special benefits?**

12 A. My objection to the existing report -- and it's,
13 in my opinion inadequate compliance with Standards 5 or
14 6, could be altered if you had a new report of a new
15 process or -- or to be blunt, to report the process that
16 was actually used but we can't see.

17 See that -- but that would be -- so yeah, would
18 I change my mind if I looked at a different report,
19 possibly. Yeah.

20 **Q. So do you -- is it your opinion that the --**
21 **strike that question.**

22 **You state an opinion in your appraisal review**
23 **about the credibility of the study to support special**
24 **benefits.**

25 A. Right.

1 **Q. Is that opinion about credibility based solely**
2 **on compliance with Standard 5 and Standard 6?**

3 A. Yes. Yes, ma'am. I didn't mean to step on you.
4 But I know the answer to that question, and it is yes.

5 **Q. So assuming that Standard 5 and Standard 6 were**
6 **both complied with to industry standards, your**
7 **conclusion that the report is not credible to support**
8 **special benefits would be changed?**

9 A. As far as that goes, yes.

10 **Q. Thank you.**

11 A. One -- one can't know what one would say about a
12 report one hasn't written -- read yet. But...

13 **Q. Assuming those conditions are --**

14 A. Yeah. It wasn't as if, no matter what you gave
15 me, I was going to say it's not credible, quite frankly.

16 **Q. So you also mention in your appraisal review the**
17 **sculpture park and research that you conducted regarding**
18 **an apartment complex near that -- that park.**

19 **Did you conduct any other research in evaluating**
20 **the ABS study?**

21 A. No, I didn't. And do you mind if I just explain
22 why?

23 **Q. Sure.**

24 A. I wasn't asked to put a value on any of the
25 properties. And therefore, the kind of -- in other

1 words, for instance, if you wanted me -- one of the
2 things that the review standard requires is if I want to
3 write a review appraisal and change the value; right?
4 You've -- you've estimated the value, \$10 million. I'm
5 looking at this review, I go, you're out of your mind,
6 it's \$9 million.

7 The rule is, I have to do everything you did to
8 get to your point. So if you hire me to estimate a
9 value, you're basically -- in this particular case if --
10 let's say that a client had come to me and said, I want
11 you to -- to, not only look at this and see if you think
12 it makes sense, but if it doesn't make sense, come up
13 with a new value for my property. Well, I would say at
14 that point, that, well, you can either do your single
15 property and -- which we can estimate its value, and
16 then we can compare that value conclusion with the value
17 conclusion that's in the Macaulay report for the as --
18 before-LID situation. That's not really getting me
19 anywhere on the after yet.

20 But if you wanted to hire me to do this job, I
21 would have given you a contract to provide a mass
22 appraisal of the properties in question.

23 **Q. But that wasn't the scope of your report?**

24 A. That was not the scope of my report.

25 And so I -- you know, I probably stuck this in

1 here for -- just because I -- I could. Because I didn't
2 go anywhere with it. What I was -- what I was thinking
3 was -- and I think this is in line with what I was
4 listening to Mr. Gibbons say, well, you could look at
5 parks and you could look -- in this particular case, I
6 happened to have 20 years or whatever records it is, how
7 ever many -- 15 years with the income data for this
8 particular property, which is across the street from the
9 sculpture garden, and was there when it opened. And I
10 look at it and I go, well, I know when the thing opened,
11 I don't see that the -- that the rents went up a whole
12 lot as a result.

13 So that's all. I mean, I didn't -- I shouldn't
14 have put it in there, really, quite frankly. Because
15 this would be part of a bigger study.

16 **Q. Because you didn't --**

17 A. I didn't draw any conclusions from it. I just
18 gave it -- it's a kind of thing that I would have wanted
19 to know because we do have improvements that create what
20 I call social capital.

21 And then the question is, did that social
22 capital create market value? Well, we don't know.
23 Sculpture garden, clearly social capital. Big -- big
24 time; right? A big attribute, just like a museum or a
25 park. But what about the apartment building across the

1 street, does it create value for it; right? Hard to
2 say.

3 **Q. But your --**

4 A. I'm not hired to answer that question about that
5 particular with property.

6 HEARING EXAMINER VANCIL: I do need to
7 ask -- there hasn't been an actual question that's come
8 out in the past five minutes. And so I recognize you're
9 following each other, but the record's overlapping each
10 other. If she says because, that's not a question.

11 Please just answer the questions that are
12 put to you.

13 THE WITNESS: Okay.

14 HEARING EXAMINER VANCIL: Please wait for
15 her to finish the questions. Please put the questions
16 to him, and let him finish the answer.

17 THE WITNESS: Okay.

18 HEARING EXAMINER VANCIL: Please proceed.

19
20 BY MS. THOMPSON:

21 **Q. What was the name of that apartment complex?**

22 A. Olympus Park, I think. Olympic.

23 **Q. And did you look at market data for any other**
24 **apartment buildings?**

25 A. No.

1 **Q. Did you look at market data for any commercial**
2 **properties near the sculpture park?**

3 A. No.

4 MS. THOMPSON: No further questions.

5 HEARING EXAMINER VANCIL: Redirect.

6 MR. STILLWELL: Just a few.

7 REDIRECT EXAMINATION

8 BY MR. STILLWELL:

9 **Q. First question. Is an appraiser's license or**
10 **any other qualifications required to conduct an**
11 **appraisal review?**

12 A. No, actually.

13 **Q. Thank you.**

14 **Second question. So you had mentioned on cross,**
15 **you sort of had a follow-up discussion regarding**
16 **something you said on direct about typically your work**
17 **involves advising clients on whether or not to pay**
18 **certain tax assessment.**

19 **Was that -- was that fair characterization?**

20 A. Yes, ma'am -- yes, sir.

21 **Q. Even though -- would you characterize that as an**
22 **appraisal review?**

23 A. Yes, I would. Because the -- the -- the
24 assignment that comes to me, and my agreement with my
25 clients is I will investigate the valuation of your

1 property to the degree necessary to let you know, within
2 this 60 days that you have to decide whether you should
3 file an appeal of that valuation to have a timely
4 appeal, whether you should appeal or not. I consider
5 that an appraisal review.

6 **Q. And so even though there are different**
7 **situations for your typical client versus this**
8 **particular LID, would you say the analytical foundation**
9 **for your work is similar?**

10 A. Yes.

11 **Q. Next -- so again, on cross, there was a**
12 **discussion about USPAP requirements. I believe you said**
13 **something to the effect of USPAP is required for county**
14 **assessments. Do you have any familiarity or comment on**
15 **USPAP requirements in municipal assessments?**

16 A. I don't know if any municipal statutes require
17 adherence to USPAP or not.

18 **Q. In your professional experience, do appraisers**
19 **working on behalf of any municipality have standards**
20 **requiring them to comply with USPAP?**

21 A. I don't know. I would strongly suspect.

22 **Q. Next, I believe -- I apologize, I think you've**
23 **answered this once or twice. But you read the**
24 **complete -- did you read the complete Macaulay study?**

25 A. To say I read it, I studied it for, you know,

1 many hours, basically a week. So did I -- I wouldn't
2 want to have to quote it back to you. I'm -- and I'm
3 talking about the final report and the addenda. That's
4 all I looked at.

5 **Q. And so that question gets to my next question,**
6 **which is, you said a few times, both on direct and**
7 **cross, that you couldn't identify or you couldn't find a**
8 **method within the study. What did you mean by that, you**
9 **couldn't find it?**

10 A. Well, I mean, I knew what I was looking for.

11 So I didn't find it. I mean, you know -- my --
12 my standard is very explicit: This is what you need,
13 where is it? I don't -- I don't have it -- you know?

14 **Q. So in your review of the Macaulay study, did you**
15 **identify, at any point, a methodology that was employed?**

16 A. No.

17 **Q. Okay. And what does that lack of a methodology**
18 **do with respect to compliance with Standard 5 of USPAP?**

19 A. Well, in my opinion, you haven't complied with
20 Standard 5.

21 **Q. And if you haven't complied with Standard 5,**
22 **what does that mean for the review standards in Standard**
23 **6?**

24 A. You might want to clarify that question a little
25 bit because I'm not sure what you mean by review

1 standards in Standard 6.

2 **Q. On cross-examination, there was some discussion**
3 **about the difference between Standards 5 and 6.**

4 A. Okay.

5 **Q. And I believe your testimony was that Standard 5**
6 **requires an identification of a method, so that in**
7 **Standard 6 you can actually review the method and its**
8 **calibrations; is that correct?**

9 A. Right. I mean, so -- the -- the consequence of
10 not having an adequate Standard 5 appraisal process of
11 development means you cannot report an adequate
12 appraisal. I mean, you --

13 **Q. Thank you. That -- and that's what I was trying**
14 **to clarify.**

15 A. Right.

16 MR. STILLWELL: I have no further redirect.

17 HEARING EXAMINER VANCIL: Thank you,
18 Mr. Scott.

19 MR. STILLWELL: And it being ten minutes to
20 5:00, would the examiner like us to proceed? We have
21 our Skype witness is up next.

22 HEARING EXAMINER VANCIL: Is that the next
23 one?

24 MR. STILLWELL: Yeah.

25 HEARING EXAMINER VANCIL: Is that the only

1 option you have for witness at this time?

2 MR. STILLWELL: We have other witness -- it
3 was our preference to begin with him because he's sort
4 of laying a foundation for issues that will be discussed
5 subsequent to his testimony. So I guess the short
6 answer would be yes.

7 HEARING EXAMINER VANCIL: Okay. And so the
8 Skype witness will be prepared to go at 9:00 a.m. on
9 Thursday?

10 MR. STILLWELL: Yes.

11 HEARING EXAMINER VANCIL: All right.

12 We'll adjourn and reconvene on March 5th at
13 9:00 a.m. Thank you.

14

15 (Hearing adjourned at 4:51 p.m.)

16

17

18

19

20

21

22

23

24

25

