

Seattle Waterfront LID Assessment Hearing

Seattle LID Hearing

April 14, 2020



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SEATTLE WATERFRONT LID ASSESSMENT HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken in Seattle, Washington

(ALL PARTICIPANTS APPEARING VIA VIDEOCONFERENCE)

DATE TAKEN: April 14, 2020

TRANSCRIBED FROM AUDIO AND VIDEO BY:

Nancy M. Kottenstette, RPR, CCR 3377

1		
2	INDEX OF EXAMINATION	
3		PAGE
4	JOHN GORDON	
5	EXAMINATION	
6	Questions By Mr. Stillwell:	9
7	EXAMINATION	
8	Questions By Ms. Lin:	19
9	EXAMINATION	
10	Questions By Ms. Thompson:	64
11	EXAMINATION	
12	Questions By Ms. Lin:	90
13	BRIAN O'CONNOR	
14	EXAMINATION	
15	Questions By Mr. Stillwell:	98
16	EXAMINATION	
17	Questions By Ms. Thompson:	108
18	EXAMINATION	
19	Questions By Mr. Stillwell:	117
20	ANTHONY GIBBONS	
21	EXAMINATION	
22	Questions By Mr. Stillwell:	119
23	EXAMINATION	
24	Questions By Ms. Thompson:	130
25	EXAMINATION	
	Questions By Mr. Stillwell:	134

INDEX OF EXHIBITS

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

NUM.	DESCRIPTION	PAGE
Exhibit 88	Sound Hotel Restricted Appraisal - Supplemental Tables	61
Exhibit 89	Waterfront Seattle Project Special Benefit Study Four Seasons Hotel as of October 1, 2019	61
Exhibit 90	Waterfront Seattle Project Special Benefit Study Seattle Marriott Waterfront as of October 1, 2019	61
Exhibit 91	Appraisal Review of ABS Valuation Appraisal Helios Apartments	138
Exhibit 92	Advisory Opinion 22	138
Exhibit 93	Document regarding COVID	138
Exhibit 94	Appraisal Institute Coronavirus (COVID-19)	138

1 HEARING EXAMINER VANCIL: I'll call to
2 order this April 14, 2020, continuance of the Seattle
3 Waterfront LID Assessment Hearing. Today objections
4 will continue to be heard from the Hearing Examiner
5 Case Numbers 233, 318, 409 through 441. We'll take
6 breaks as identified by the hearing examiner with a
7 lunch approximately at noon.

8 I believe everyone was already on for
9 instructions, and those don't need to be part of the
10 recorded hearing process. But just to touch on some
11 items we haven't had a chance to yet, if a witness is
12 testifying, Counsel, call the witness by name to
13 appear. They'll be sworn in either oath or
14 affirmation. The hearing examiner will be asking them
15 to state their name and spell it for the record.

16 Witnesses should enunciate and speak clearly.
17 Again, keep your eyes on the camera so that you know
18 whether someone is saying we can't hear you and stop
19 immediately if that happens, and then we'll get the
20 audio reconnected or ask you to repeat something.

21 There's an opportunity for cross-examination
22 of each witness. Any representative raising an
23 objection, raise your hand as you state the objection.
24 State the full basis of the objection, and then
25 opposing counsel should be prepared to respond to the

1 objection or withdraw the question being asked.

2 Witnesses, if an objection is raised, stop
3 immediately. Do not respond to a question when an
4 objection has been raised. You'll be signaled when
5 you can pick up and continue your testimony.

6 Are there any procedural questions or matters
7 that we need to address before we get started today?

8 MR. STILLWELL: One for objectors,
9 Mr. Examiner. This is Jacob Stillwell from Perkins
10 Coie on behalf of the objectors. I was asked to
11 confirm if there were any outstanding matters with
12 regard to the evidentiary motion filed on April 8
13 filed by Ms. Lin. We have confirmation of receipt
14 from Mr. Edlund-Cho and Mr. Filipini, but I was asked
15 to confirm if there were any other outstanding matters
16 with regard to filing that motion?

17 HEARING EXAMINER VANCIL: The filing
18 has been completed. We haven't talked about process
19 of how we're going to proceed with that.

20 Is the City going to file a response?

21 MS. THOMPSON: Yes. We do intend to
22 file a response.

23 HEARING EXAMINER VANCIL: And what is
24 the timing for that?

25 MS. THOMPSON: Well, typically, in the

1 past we've received an e-mail from Mr. Edlund-Cho
2 stating that we, you know, have seven days under the
3 rules to respond. We've been proceeding -- we didn't
4 receive an e-mail like that in this case, but we've
5 been proceeding according to that understanding. So
6 based on the filing date of last Wednesday, we would
7 be filing our response at the latest tomorrow.

8 HEARING EXAMINER VANCIL: Okay.

9 MR. STILLWELL: And the objectors have,
10 it looks like, offered a portion of the April 16
11 hearing for oral argument, to the extent that would be
12 helpful, by Mr. Clark Nichols on behalf of objectors.

13 HEARING EXAMINER VANCIL: It's not
14 going to help much if the City hasn't had a chance to
15 file their response.

16 City, are you planning on filing at the end of
17 tomorrow?

18 MS. THOMPSON: I would need to check
19 with Mr. Filipini on the exact timing. Our
20 position --

21 HEARING EXAMINER VANCIL: I'm sorry.
22 Actually, I apologize. I got my (inaudible) crossed
23 over. Tomorrow is Wednesday, not Thursday, and we're
24 not on until hearing on Thursday. So regardless of
25 whether the City does it at the end of the day or not,

1 it's -- the City will have it in before our hearing
2 date for the 16th, it's my understanding. Is that
3 right?

4 MS. THOMPSON: That's correct. The
5 City's position is that oral argument is not
6 necessary.

7 HEARING EXAMINER VANCIL: The hearing
8 examiner will reserve right to call for oral argument
9 on Thursday and may -- right now I'm treating this --
10 it's an evidentiary motion, and it's made mid-hearing.
11 So I'll be reserving the right to issue an oral ruling
12 on Thursday. And I'll let the parties know on that
13 date whether additional argument is necessary or not.
14 So parties' representatives should be prepared to
15 present that if asked for it, and we'll do that at the
16 top of the day on the 16th.

17 MR. STILLWELL: Thank you. Nothing
18 further procedurally from objectors.

19 HEARING EXAMINER VANCIL: Okay.

20 MR. STILLWELL: And if there's nothing
21 further to begin, we'd like to -- objectors would like
22 to open matter -- matters on behalf of the Four
23 Seasons Hotel which are actually three separate
24 matters, 432, 433, and 434.

25 And for these matters, objectors would like to

1 call John Gordon as expert witness who I believe is on
2 the line.

3 MR. EDLUND-CHO: Examiner Vancil, this
4 is Galen Edlund-Cho. Just to let you know, Mr. Gordon
5 is in the waiting room.

6 HEARING EXAMINER VANCIL: And you're
7 the host. These are things I needed you to address
8 before we got started in switching the host over, but
9 you're the host now, so go ahead.

10 MR. GORDON: I apologize for being late
11 to the party. Was that a general party or just me?

12 HEARING EXAMINER VANCIL: Just you.

13 MR. GORDON: Just me.

14 HEARING EXAMINER VANCIL: That's fine.
15 We've only done the preamble, and no one was waiting
16 so you're in fine order.

17 MR. GORDON: Thank you.

18 HEARING EXAMINER VANCIL:

19 Mr. Edlund-Cho, are we ready to proceed
20 procedurally with the system?

21 MR. EDLUND-CHO: Yes.

22 HEARING EXAMINER VANCIL: Objectors,
23 ready to proceed?

24 MR. STILLWELL: Yes.

25 HEARING EXAMINER VANCIL: Please do so.

1 MR. STILLWELL: Thank you.

2 E X A M I N A T I O N

3 BY MR. STILLWELL:

4 Q Good morning, Mr. Gordon.

5 A Good morning.

6 Q We're going to begin with the Four Seasons
7 Hotel. Could you please begin by describing the
8 property for us.

9 A Four Seasons is an interesting property. It's
10 a mixed use building that really has four components.

11 There's a very strange echo on the -- on the
12 sound now. Are you guys getting an echo when I speak?

13 HEARING EXAMINER VANCIL: I did hear
14 that.

15 MR. GORDON: Now I'm not hearing it, so
16 maybe it's fixed.

17 A The Four Seasons has four components. It's a
18 hotel on the lower floors and condominiums on the
19 upper floors. The hotel also has a garage and retail
20 space. There are two street retail shops, a chocolate
21 shop and a coffee spot, both of which front on First
22 Avenue.

23 In the operating statements of the hotel, they
24 combined the operation of the guestrooms and the
25 restaurant in the hotel with the garage operation and

1 the retail rents. And so they consider it to be one
2 entity with the condominiums above being a second
3 entity.

4 In the assessor's records, they treat the
5 hotel as one parcel, the garage as another parcel, and
6 the retail space as another parcel, and then each of
7 the individual condominiums, of course, is their
8 own -- has their own parcel, but we're not addressing
9 the condos this morning.

10 The -- in our analysis, we combine all three
11 elements of the hotel -- the hotel itself, the garage,
12 and the retail space. We came up with one -- we -- in
13 our appraisal review, we reviewed that as a single
14 entity rather than trying to divide it up.

15 Q Thank you.

16 A As a footnote, it's got 147 guestrooms, a
17 first floor restaurant, some meeting space, a really
18 nice outdoor pool overlooking the Puget Sound, and the
19 level of service at the Four Seasons is unmatched in
20 this town. It is widely regarded and justifiably so
21 as the finest small hotel in -- you know, small to
22 midsize hotel in this city.

23 Q Thank you. And can you please speak to its
24 operating strategy in the Seattle market?

25 A Well, their strategy is to keep their rates as

1 high as they can. They feel that their level of
2 service and the very high quality of the guestrooms
3 and common areas justifies high prices, and they've
4 maintained some rate integrity in the face of
5 difficult circumstances. So their strategy, I guess,
6 in the broad picture is we're going to keep rates
7 high, and if occupancy slips, so be it.

8 They go after primarily business travelers,
9 the top tier business travelers. So the president of
10 the company might stay at the Four Seasons while most
11 of his staff is over at the Sheraton or the Westin.
12 But they also do get some leisure travel. They don't
13 compete for convention business, but they do
14 occasionally get some small groups in that they're
15 using the space within the hotel itself, but it's
16 primarily a top tier business property.

17 Q Thank you. And did Kidder Mathews prepare an
18 appraisal review of the Four Seasons?

19 A Yes, we did.

20 Q And I would like to draw the attention to
21 what's been marked as Exhibit 89, Kidder Mathews
22 appraisal review for the Four Seasons Hotel. Do you
23 have that in front of you?

24 A Yes, I do.

25 Q And is this the --

1 A I lost you there for a second.

2 MR. GORDON: I think Jake is frozen.

3 HEARING EXAMINER VANCIL: Yeah. It
4 looks like -- just wait a moment, Mr. Gordon. I can
5 see we're still connected, but he is and maybe another
6 participant, so we'll wait to see if he can get
7 reconnectivity.

8 MR. GORDON: It looks like he's
9 starting over.

10 HEARING EXAMINER VANCIL: We'll just
11 have to wait for his return.

12 Mr. Gordon, I assume your counsel didn't leave
13 you a phone number to reach in case he got
14 disconnected?

15 MR. GORDON: I do have his office
16 number, and, hopefully, it will link to his home. We
17 can try that. Let's see. I'll mute myself while I'm
18 on the phone.

19 HEARING EXAMINER VANCIL: Okay. Thank
20 you.

21 MR. GORDON: I was only able to leave a
22 voice mail.

23 HEARING EXAMINER VANCIL: Okay. Well,
24 we appear to have lost counsel for objectors.

25 MR. GORDON: Is Jake also the counsel

1 for Brian's presentation?

2 HEARING EXAMINER VANCIL: I assume so.
3 I believe he's the only counsel we have with us right
4 now for Perkins Coie.

5 MR. GORDON: I'm going to see if I can
6 get ahold of Megan and maybe --

7 HEARING EXAMINER VANCIL: All right.
8 We'll stop recording. Mr. Edlund-Cho, if you can stop
9 the recording, we're going to take a recess and
10 attempt to see if we can get Mr. Stillwell back to
11 join us.

12 Please note that if you do any speaking or
13 video, it's still feeding. This room is going to stay
14 open. I'm going to turn off my mute and video, but I
15 can still hear anyone that has their audio on and
16 speaking. But for the moment, I'm going to step out.
17 Mr. Edlund-Cho and I are both monitoring, so if
18 Mr. Stillwell steps back in, we'll be aware of that.
19 But for the time being, I'm going to step out. We'll
20 see if we can get him to join, and then I'll
21 reconvene. If we don't get him to join, we'll suspend
22 the hearing until we can find him at a later date.

23 (A break was taken.)

24 HEARING EXAMINER VANCIL: We can
25 continue proceeding. This is part of the normal

1 process for these hearings today.

2 MR. STILLWELL: Thank you.

3 HEARING EXAMINER VANCIL: It's
4 really -- let's just assume that somebody crazy from
5 the elevators came running into the hearing room and
6 disrupted us. We'll get back to -- these things
7 happen.

8 MR. STILLWELL: New normal.

9 HEARING EXAMINER VANCIL: Your witness.
10 Please proceed.

11 MR. STILLWELL: Thank you.

12 BY MR. STILLWELL:

13 Q I believe, Mr. Gordon, I just asked you if the
14 document marked Exhibit 89, appraisal review of the
15 Four Seasons, if that was the appraisal review that
16 you had prepared for Kidder Mathews?

17 A Yes, it is, and I'm looking at it now.

18 Q Thank you. And did the City estimate the
19 special benefit for the entire Four Seasons?

20 A They -- they -- as I recall, they made
21 estimates for all three components, but we -- in this
22 review, we combined them. So on page 6 of the review
23 at the middle or the bottom of the page, the before
24 and after values are for all three components
25 combined.

1 Q And so what did -- what did your review
2 conclude was the estimated special benefit for the
3 entire property?

4 A Well, our review didn't conclude the special
5 benefit. The review done by the City concluded a
6 special benefit for those three components of
7 4 point -- \$4,696,000.

8 Q And of that, what is the final proposed
9 assessment?

10 A 1,839,997.

11 Q And according to your review of the study and
12 the property, how much additional revenue would the
13 Four Seasons have to generate to recapture the LID
14 assessment?

15 A I'll have to look at the document itself. I
16 don't recall the number.

17 Q And I direct your attention to the actual page
18 for the pdf is page 10. It is marked as page 9, which
19 discusses the --

20 A Okay. Yeah. So we were -- we were estimating
21 that the even -- the required revenue increase would
22 be 3 percent.

23 Q And given the current market conditions, both
24 currently with COVID in mind and also before COVID,
25 just the general commercial downtown area market

1 conditions, is it reasonable to expect the Four
2 Seasons to be able to generate this additional
3 revenue?

4 A Well, with COVID, the hotel is closed, so
5 they're not generating any revenue. They don't have
6 a -- they haven't advertised a reopening date yet.
7 Most of the 25 hotels that have shut down in the CBD,
8 about half of them have a tentative opening date
9 sometime between May 1 and June 5, and the other half
10 aren't even trying to guess when they'll reopen.

11 So in answer to that part of your question,
12 there's no revenue coming in, and they're not going to
13 get any until they open back up.

14 But as of the effective dates of the City
15 study and our appraisals, both of those predated the
16 outbreak. The -- our analysis was in two parts. We
17 asked if you assume that you have to increase revenue
18 by 3 percent, then that could be accomplished either
19 by raising rates or by increasing occupancy or some
20 combination of both.

21 We discussed at yesterday's hearing the
22 difficulty of raising rates in an environment where
23 the market is so -- where the market is so competitive
24 where we have new hotels that have come in. And even
25 if the Regency and the other new properties are not

1 direct competitors of the Four Seasons, they do put
2 downward pressure on rates, and that tends to domino
3 through the city.

4 But if some of the hotels are reducing rates,
5 that makes them more attractive to guests, and,
6 therefore, the hotels that weren't planning to reduce
7 rates find that they do have to soften them or at
8 least hold them constant, not impose any increases, in
9 order to keep the guests from jumping ship and going
10 over to the other hotel.

11 The Four Seasons rates are so high that
12 it's -- it's perhaps at that level, the amount that
13 you're paying is less important, so it might be more
14 possible for the Four Seasons to bump its rates up a
15 little bit than it would be for some other hotels.
16 Because somebody who is already paying multiple
17 hundreds of dollars for their hotel, a 3 percent
18 increase probably wouldn't kill them.

19 In terms of occupancy, we looked at the
20 capacity of the market as we did in the other
21 reviews -- I'm sorry. Looked at the capacity of the
22 hotel during the peak season, which is when we would
23 expect additional demand to be potentially attracted
24 into the market. The business travelers are going to
25 come anyway. The group events are scheduled anyway.

1 But leisure travel tends to fluctuate more.

2 So we looked at the period from May to October
3 and said, well, during this period, how much -- how
4 much demand potentially could come into the market --
5 would be necessary to come into the market in order to
6 get that 3 percent increase in revenue, assuming you
7 held room prices constant.

8 And then we looked at the capacity of the
9 hotel, the Four Seasons, during those months and asked
10 do they really have space to accommodate that many
11 additional people. So that was the methodology that
12 we took.

13 Did that answer your question? Oh, no. And
14 he's not there?

15 HEARING EXAMINER VANCIL: Yeah,
16 Mr. Stillwell may be blocked out.

17 MR. GORDON: Megan was going to try to
18 make herself available if his system doesn't work.

19 HEARING EXAMINER VANCIL: And she is
20 on, yes.

21 MR. GORDON: Okay.

22 MS. LIN: Hi, this is Megan.

23 MR. GORDON: We can hear you, but we
24 can't see you.

25 MS. LIN: Okay. Let me just pull it up

1 and all right. So apologies while I get up to speed
2 here.

3 HEARING EXAMINER VANCIL: Good morning.

4 MS. LIN: Good morning.

5 E X A M I N A T I O N

6 BY MS. LIN:

7 Q I'm just going to pull up -- so it looks like
8 we were talking about the Four Seasons and whether it
9 is reasonable to expect the Four Seasons to be able to
10 immediately generate the additional revenue needed.
11 Is that correct, Mr. Gordon?

12 A Yes.

13 HEARING EXAMINER VANCIL: And let me
14 just pause for a moment, Ms. Lin. Mr. Stillwell was
15 proceeding with the witness. Are you comfortable
16 stepping in to cover for him at this point? Is that
17 how you want to proceed? We're perfectly willing to
18 accommodate however you want to manage your witnesses
19 for purposes of presenting for the objectors. I just
20 want to make sure we're clear for the record how we're
21 proceeding.

22 MS. LIN: Yeah, it appears
23 Mr. Stillwell is having a lot of technical
24 difficulties, and so I am stepping in.

25 HEARING EXAMINER VANCIL: Okay. We do

1 have that limitation, it seems. I think we have
2 settled on, at least for now, a reasonable platform
3 working with Zoom, but we're still limited by the
4 technical capacity of each individual in their remote
5 homes. So we weren't all ready to do this, so it's
6 mixed what we have.

7 All right. Ms. Lin, please proceed. It's
8 your witness.

9 BY MS. LIN:

10 Q And, Mr. Gordon, I apologize if I end up
11 asking you a question you've already answered. I'm
12 coming into this, basically, right now.

13 So about how many additional guestrooms would
14 be required to meet this increased demand?

15 A We estimate that about 2,800 new rooms would
16 be required, and that -- the capacity -- the
17 vacancy -- the number of vacant rooms during that peak
18 period -- and this would be for the most recent year
19 that we had available -- was page -- page --
20 page 3240, and I'm referencing page 11 of the review.

21 So, in theory, it would be possible for the
22 hotel to squeeze in enough additional people during
23 that peak season in order to reach the increase in
24 revenue that's implied by the City appraisal, by the
25 City study.

1 In point of fact, that would mean that those
2 stays of those new guests would almost have to
3 dovetail perfectly in order to fill the empty rooms.
4 It's much more likely that you'd get -- particularly
5 during the summer, you'd get a surge of leisure travel
6 on the weekends and less so during the week, still
7 some but less so.

8 So the likelihood of being able to shoehorn
9 2,800 guests into precisely the room -- the room
10 nights that are available is a low likelihood. But on
11 paper, it is technically possible.

12 Q And is it reasonable to -- and you've sort of
13 answered this. But is it reasonable to expect that
14 the Four Seasons can generate this increased demand?

15 A I doubt you'd get enough bodies squeezed into
16 the hotel in order to create the increase in revenue
17 without also increasing room prices. It's just
18 unlikely that everybody's chosen day of stay would
19 perfectly coordinate to allow that to happen.

20 Q And consistent with your prior testimony, if
21 you were to value the Four Seasons today, would you
22 expect to see about a 10 to 15 percent decrease in the
23 property value due to COVID-19?

24 A That's what we've seen in the four hotels that
25 I have appraised taking into account the virus. I

1 don't know if that's going to hold consistently over
2 every market or every hotel, but that's the only
3 information I've got. That's the only basis to go on
4 is that it's a 10 or 15 percent drop in value.

5 And I may be repeating myself, but the reason
6 it's not a more serious drop -- revenue this year is
7 going to go down by 40 or 50 percent in most markets,
8 but a current value takes into account, not only the
9 current year, but years going forward. So when we're
10 estimating today's value -- the impact of the virus on
11 today's value, yes, it affects year 1 and year 2, but
12 maybe it doesn't affect year 3 and beyond that. It
13 shouldn't affect anything. So that's -- that's why
14 the decrease in value is less than the decrease in
15 revenue.

16 Q Okay. Is there anything else you would like
17 to highlight with respect to your review of the Four
18 Seasons?

19 A No. It's similar in all respects to the other
20 reviews that we've done.

21 Q Did you review the -- did you already go over
22 Mr. Macaulay's spreadsheet for the Four Seasons with
23 Mr. Stillwell?

24 A No.

25 Q Let me -- can you pull that up, please.

1 A Yes. And I'm looking -- now, he -- the City
2 spreadsheet, he's got the three elements separated, so
3 it's really three spreadsheets. It's the hotel, the
4 garage, and the retail space, but I'll start with the
5 hotel. That's where most of the excitement happens.
6 I'm looking at the hotel spreadsheet now.

7 Q And so I'm looking at the -- did Mr. Macaulay
8 apply the same four-scenario methodology that he
9 applied to the other hotels?

10 A Yes, he did.

11 Q And it appears that he -- he applied a
12 1.9 percent increased income in the low scenario and a
13 2.4 percent increase to income in the high scenario;
14 is that correct?

15 A That's correct. Yes.

16 Q Is there any -- from your read of this final
17 study and the spreadsheet, is there any basis for
18 these increases in income?

19 A No.

20 Q Are these increases within the margin of
21 error?

22 A Well, 2.5 percent is getting fairly high, but,
23 yeah, I would say that they're still within a
24 5 percent margin of error.

25 Q Is it possible to accurately conclude that the

1 reason for these incremental percentage increases are
2 due to the LID improvements?

3 A No. And that's because there's so many --
4 well, they are in his analysis because that's the only
5 change that he makes is he says here's the LID and
6 here's not the LID. But there's no basis to support
7 or verify that these particular percentages are
8 correct or that any positive percentage would be
9 correct. In other words, it might be zero.

10 Q And, in fact, has the Four Seasons raised any
11 rates in anticipation of the LID improvements?

12 A No. And you've asked that question on the
13 other properties as well. I wouldn't expect the
14 hotels to raise rates based on the idea that they'll
15 get a park in five years. If the park does have an
16 impact, which I doubt, that impact would not be felt
17 until it actually exists.

18 Q And does he apply these same percentage
19 increases to food and beverage revenue and parking and
20 other income?

21 A Yes, he does.

22 Q Any explanation for why?

23 A No. By implication, he's assuming that either
24 all of the food and beverage revenue is coming from
25 hotel guests, which is pretty close to true for that

1 hotel, because it's -- it's an expensive restaurant,
2 and it's mostly hotel guests who are eating there, I
3 would suspect.

4 But sorry. I lost -- lost track of the
5 question. In the back of my mind, I'm thinking, wait,
6 the parking revenue is not part of this. You phrased
7 your question to say food and beverage and parking.

8 Q Oh, right. Because the garage is a separate
9 parcel?

10 A Right.

11 Q Understood.

12 A So, in other words, he's either assuming that
13 all the F&B comes from hotel guests, which may be
14 correct, or that local people coming in to have lunch
15 and dinner are going to pay a little bit more because
16 there's a park down at the bottom of the hill. Those
17 are the two possible explanations for why food and
18 beverage revenue would increase.

19 Q And in the third and fourth scenarios,
20 Mr. Macaulay assumes that the net operating income
21 remains the same as in the before condition but
22 changes the cap rate from 7.25 percent to 7.07 percent
23 and 7 percent?

24 A Right.

25 Q Are these changes in cap rate, which I believe

1 are 18 and 25 -- .18 percent and .25 percent,
2 supportable?

3 A Well, it's being used as a test. A
4 .25 percent change in a cap rate is not unusual. A
5 cap rate of 7.07 percent sounds extremely precise.
6 And that degree of precision would not be supportable
7 even with a good set of comp sales.

8 But for the purpose that he's using it, you
9 know, if he said 7.1 and 7.0 just as a test to see
10 what the impact is on value, that would be a
11 reasonable approach to take. But the shaving between
12 7.07 and 7 is too small to really be measured or
13 supportable.

14 Q And then it appears he uses these four
15 scenarios to conclude a -- to conclude that the Four
16 Seasons property value will increase 3 percent due to
17 the LID improvements; is that right?

18 A Yes, that's the special benefit ratio.

19 Q Is this -- is this increase in property value
20 within the margin of error for appraisals?

21 A It is. Three percent is pretty minimal.

22 Q And then you mentioned he broke out retail and
23 garage; is that right?

24 A Yes. They're on different spreadsheets.

25 Q Is that -- is that -- why did he do that?

1 A I suspect because that's the way the assessor
2 does it. The garage is a separate tax parcel, and
3 those two little retail shops, for reasons unknown,
4 are a separate tax parcel. Sometimes the delineation
5 of the legal descriptions of the properties delineate
6 a hotel into pieces for some sort of tax reason or
7 differences in ownership.

8 You'll recall from yesterday that the Grand
9 Hyatt Hotel is delineated -- is divided into two
10 parcels, one of which is the guestrooms, and the other
11 is all the common areas and service areas. There's no
12 operational reason to do that, but there may be
13 some -- some legal or tax implications.

14 Q So, actually, just a follow-up question to
15 that, why for the Grand Hyatt would there be one
16 spreadsheet for the two parcels; whereas here for the
17 Four Seasons, there are three spreadsheets for the
18 three parcels?

19 A You'd have to ask the City appraiser.

20 Q Okay. Turning to the retail portion --

21 A Okay. I'm looking at it.

22 Q -- so does he apply the same four scenarios to
23 change -- to apply percentage increases to income and
24 changed cap rate that he does with the other hotels?

25 A Yes. Well, yeah, they're modified because

1 this is retail space rather than a hotel, but it's,
2 basically, the same approach. He -- he tests -- he
3 has low and high increases in retail revenue of 2.5
4 and 3.5 percent.

5 And in his third and fourth scenarios, he
6 varies the cap rate -- his original cap rate was
7 4.5 percent. And in his third and fourth scenarios,
8 he drops that down to 4.35 and 4.39. He actually
9 seems to have reversed them by mistake, but it doesn't
10 affect his results.

11 Q When we were looking at the hotel, just
12 starting with the special benefit percentage increases
13 to the income, the low-high percentages were 1.9 and
14 2.4?

15 A Right.

16 Q But then for retail, they're 2.5 and 3.5?

17 A Right.

18 Q Is this consistent with how he treated retail
19 that was retail income from hotels where there was
20 only one parcel?

21 A No. There he just applied -- he lumped all
22 the income together and applied just one pair of
23 growth assumptions.

24 Q And from --

25 A So, in essence, he was applying the same rates

1 to the retail space as the hotel.

2 Q And from an appraiser's perspective, does the
3 mere fact that this is a different parcel warrant a
4 different special benefit percentage increase to
5 retail income than if it were just part of one parcel?

6 A Well, I think you'd find that appraisers --
7 some appraisers would separate them out the way he
8 did, and others would treat it all as one parcel. But
9 the question of the growth rates is, I think -- I
10 don't see any support for using different rates of
11 growth.

12 And also I'd point out that retail space is
13 leased. So I don't see why the leases would be
14 adjusted upward -- you know, why the property owner
15 would let the tenant -- would be able to charge more
16 rent to the tenant because there's a park down the
17 street. That's the implied assumption in these tests
18 that -- that these leases will be rewritten, or when
19 they expire, then the new rent will come in and the
20 rents will be increased because of the park.

21 That could happen. It's not beyond the realm
22 of possibility, but there's no evidence in his study
23 that really supports either these growth rates or that
24 there will be any growth rates.

25 Q And then, similarly, with cap rates, here he

1 starts with a cap rate -- for the retail parcel, he
2 starts with a cap rate of 4.5 percent and then adjusts
3 that to 4.35 percent in the low scenario and
4 4.39 percent in the high scenario. Is this consistent
5 with how he treated cap rates where the retail income
6 was part of the same parcel as the hotel?

7 A I think he would probably argue that in those
8 other circumstances where the income was combined he
9 was selecting a blended cap rate saying, no, here's
10 the cap rate that would take into account the
11 different risk factors of the different elements of
12 income and blend them all together and come up with a
13 cap rate that applies to the overall property.

14 Q Is that --

15 A That's not -- that's a valid approach to take,
16 but it's very hard to support because you don't -- you
17 can't find sales of properties that have the precise
18 same mix of revenue sources. So either you need to
19 say, well, this is just too little retail shops. A
20 lot of hotels have those. We're just going to call it
21 a hotel and use a hotel cap rate.

22 Or you do what he did here and split out the
23 retail and say retail cap rates are usually
24 4.5 percent in this market for nice, new retail space,
25 and I'm going to test what happens if that cap rate

1 comes down a little bit once the park -- once the LID
2 improvements are in place.

3 So it's not -- that's not an error on his part
4 of not combining them.

5 Q Is there any --

6 A (Inaudible) he's consistent all the way
7 through.

8 Q Is there any actual indication that he's using
9 this blended cap rate approach?

10 A No. And as I say, no, he's not using a
11 blended cap rate. He's doing individual cap rates for
12 each element. I was -- maybe I misspoke. But I'm
13 suggesting that an alternative --

14 Q For the other hotel?

15 A Oh, for the other hotels, yeah, he never comes
16 out and says this is a blended rate that takes into
17 account 5 percent for retail revenue and 15 percent
18 for parking revenue and all the rest for hotel revenue
19 and here are my different rates for each of those
20 components and I'm blending it down to this.

21 In some appraisals, you'll see that spelled
22 out very clearly if they're using a blended rate.

23 Q And, in fact, it looks like -- so if you're
24 looking back at the hotel spreadsheet, it looks like
25 he starts with a cap rate of 7.25 percent for the

1 hotel portion of the Four Seasons. This is the same
2 cap rate he's using for hotels where he's also
3 considering retail income and parking income; is that
4 right?

5 A Yes. That's -- well, he's used a narrow range
6 of rates, but 7.25 is probably near the midpoint of
7 the ones he's used.

8 Q So it's not clear at all whether or not
9 he's -- whether or not he's adjusting cap rates to
10 account for retail income and parking income in those
11 hotels where all of those are part of one parcel?

12 A No. There's no -- there's nothing in the
13 spreadsheets that indicates that that sort of
14 calculation was done.

15 Q Okay. And then turning to the garage portion,
16 does he, again, apply the same methodology where he
17 comes up with four scenarios adjusting income and cap
18 rate?

19 A Yes.

20 Q And for the first two scenarios, it looks like
21 he assumes that the parking income will increase by
22 2.5 percent in the low scenario and 3.5 percent in the
23 high scenario; is that right?

24 A Yes. I believe those are the same ratios he
25 used for the retail component.

1 Q And is there any basis for -- is there any
2 basis from your read of the final special benefit
3 study or the underlying spreadsheets for these
4 incremental increases?

5 A Nothing that I saw.

6 Q And for the third and fourth scenario, it
7 looks like he assumes a net operating income is going
8 to remain the same but changes the cap rate from, what
9 is it, 6 percent to 5.8 percent and 5.85 percent; is
10 that right?

11 A That's correct.

12 Q Any explanation for these changes?

13 A No. There's -- there's no explanation.
14 Because the income is held constant, the fact is to
15 increase the value. And so by implication, he
16 believes that the LID improvements will increase the
17 value, and he's trying to estimate how much of a
18 change in the cap rate will be required to create
19 those increases. But since he doesn't seem to begin
20 with a cap rate change themselves, it feels as though
21 it's -- as though he may be backing into them.

22 Q And, in fact, he uses these four scenarios in
23 both the garage and retail parcels to conclude a
24 special benefit increase of 3 percent; is that right?

25 A Yes, yes. All three elements by -- all three

1 elements of the property are assumed to increase by
2 3 percent as a result of the LID improvements.

3 Q Is that pretty serendipitous?

4 A It's a remarkable coincidence, yes.

5 Q Is there anything else you would like to
6 highlight about the Four Seasons?

7 A Well, I would point out that his cap rate --
8 because this is the top of the market, this particular
9 hotel, consistently successful, there is very little
10 chance that it's going to get a new direct competitor,
11 somebody else like a Ritz-Carlton or a Mandarin
12 Oriental, something at the extreme top-of-the-lodging
13 sphere. It's very unlikely that one of those
14 properties is going to open and compete with the Four
15 Seasons and give them a problem, you know -- a problem
16 achieving the projected income.

17 So my sense of that property is it justifies a
18 very low cap rate. The lowest I heard in this market
19 was around 6 percent. That was for another very
20 high-end property. So the fact that he used a 7.25
21 cap rate for as is or the before scenario is
22 probably -- that's -- that might be viewed as
23 conservative. I would just point that out.

24 Now, the cap rates that he used for the
25 parking garage and the retail space seem within the

1 general ballpark for those property types. The
2 parking garage one might be a little high.

3 But all in all, it doesn't appear that his cap
4 rate selection would be -- it was certainly not high.
5 I'm sorry. It was certainly not low, his selected cap
6 rate for the hotel. And it might well be regarded as
7 high, which means that there could be upward pressure
8 on the value for that property.

9 At the same time, some of the other
10 assumptions that show up in his spreadsheet are pretty
11 optimistic with respect to operating performance. So,
12 you know, we're not -- we're not submitting an
13 appraisal for this property so we don't -- you know,
14 I'm not stating definitively what direction the value
15 might move in, but there's reason to question several
16 elements of his analysis.

17 Q And so could this be one of those situations
18 where different errors throughout ended up resulting
19 in a -- in a before value that was not too far off but
20 not because the data was correct?

21 A It's possible. The owners of this property
22 are extremely careful not to reveal anything about how
23 they're performing to anybody, even to the point --
24 you'll recall that in our appraisals of the other
25 hotels, we did not include actual results, historical

1 results, for those hotels, but we did include in our
2 appraisal, necessarily, our forecast of how we thought
3 the property would do.

4 And even that information can be -- people can
5 be very sensitive to having that disclosed. So the
6 owners here just would prefer that we not get into
7 detail about their either historical or projected
8 performance.

9 Q Okay. Anything else with respect to the Four
10 Seasons?

11 A No. Super nice place. If you ever have -- if
12 somebody else is ever paying the bill, that's the
13 place to stay.

14 Q All right. I think we can move on then to the
15 next property?

16 A Would that be the Marriott?

17 Q Yes. I'm sorry. I'm just pulling this up.

18 HEARING EXAMINER VANCIL: And, Ms. Lin,
19 do you need -- you jumped right in, and I appreciate
20 that. Do you need a moment to confer with
21 Mr. Stillwell or make sure that you had all questions
22 answered from the last -- from the Four Seasons? Do
23 you need a minute to call him or anything? We could
24 take a break to do that or we could just continue.
25 That's fine. But I want to make sure, because there

1 was a break in counsel, that we mend that as much as
2 possible.

3 MS. LIN: Yeah, if it makes sense to
4 take a break right now for the hearing examiner, I
5 think that would be helpful.

6 HEARING EXAMINER VANCIL: It's 10:00.
7 I'd like to give you that opportunity. So let's do
8 that now. Let's -- and to switch over to
9 Mr. Edlund-Cho so he can manage things from that end
10 with the recording. We'll take a break, and we'll
11 return at 10:15. And at that time if you need more
12 time, Ms. Lin, let me know, but I'll assume we've got
13 everything taken care of. Thank you.

14 (A break was taken.)

15 HEARING EXAMINER VANCIL: Okay. Let's
16 proceed. Ms. Lin, are we okay to proceed? Do you
17 need any additional assistance or time accommodation
18 to coordinate with your counsel?

19 MS. LIN: No. I think I'm ready to
20 proceed.

21 MR. GORDON: Mr. Hearing Examiner, I
22 don't see the City attorney. Is she online and I'm
23 just not seeing her?

24 HEARING EXAMINER VANCIL: She has not
25 joined us. Thank you for catching that, Mr. Gordon.

1 MR. EDLUND-CHO: Would you like me to
2 reach out to Ms. Thompson?

3 HEARING EXAMINER VANCIL: Yes. We can
4 stop the recording, Mr. Edlund-Cho.

5 (A break was taken.)

6 HEARING EXAMINER VANCIL: Your witness.
7 And you are muted by the way.

8 BY MS. LIN:

9 Q My apologies.

10 Hi, Mr. Gordon, we're going to be talking
11 about the Marriott. And this is Case Number CWF 0439.
12 Have you reviewed this property with respect to the
13 Waterfront LID assessment?

14 A Yes.

15 Q And can you describe the property?

16 A Marriott is a really nice hotel, 360-plus
17 rooms. It sits across the street from the waterfront.
18 So, technically, it would be considered a water view
19 hotel rather than a waterfront hotel, like the
20 Edgewater is, but it's in the same area as the
21 Edgewater.

22 Other improvements nearby include Pier 70
23 which have some retail and restaurant space, the
24 terminal for the Princess Marguerite that goes up to
25 Victoria.

1 There is some less developed or less desirable
2 developments to the south of the Marriott extending
3 down to the development site for the Waterfront Park.
4 That's a distance of -- well, I haven't measured it.
5 But it's a distance of several blocks down to where
6 the new work would go.

7 The Marriott itself has valet parking, some
8 garage space. It's got a very nice restaurant. It
9 takes a little time to get to the restaurant because,
10 for some reason, it was placed at the opposite end of
11 the hotel from the front desk. But once you get
12 there, it's okay.

13 The Marriott, in comparison to other hotels in
14 downtown Seattle, it gets a higher ratio of leisure
15 travel than does -- than would the Hyatt, for example,
16 because it's on the water. It's a very strong
17 performing hotel consistently so, and it's not very
18 old. Sitting here I think I want to say 2003, 2004
19 construction, but I -- I would have to look it up.
20 But it's a good -- very nice property.

21 Q And did someone from Kidder Mathews prepare an
22 appraisal review for the Marriott?

23 A Yes. It was prepared jointly by Peter Shorett
24 and Jesse Baker, and then I made revisions to it
25 myself.

1 Q Okay. And this is Exhibit 90.

2 A Yeah. I'm looking at it.

3 Q So on page 6, at the bottom of page 6, we're
4 just looking at the before, after, special benefit,
5 and LID assessment numbers. Are these the -- is this
6 the City's before value of the property?

7 A Yes. All these numbers are the City's
8 numbers.

9 Q And so the City's before value is 167,975,000?

10 A That's correct.

11 Q And the City's after estimate is 173,352,000?

12 A Correct.

13 Q And the City's estimate of special benefit is
14 5,377,000?

15 A Yes.

16 Q And then the LID assessment is \$2,106,827?

17 A Yes. The LID assessments are all calculated
18 at 39.2 percent of the special benefit.

19 Q And on page 10 of this appraisal review,
20 there's a section -- so it's subsection entitled
21 required revenue increase?

22 A Right.

23 Q Can you explain what this section is showing?

24 A Well, what we're showing in here -- it goes on
25 for, I think, a couple pages is a test, basically, as

1 to whether or not the special benefit ratio that's
2 estimated by the City at 3.2 percent, whether that's
3 actually achievable for this property.

4 And as with the other hotels, there are two
5 elements of whether it's achievable. One is whether
6 they could raise their room prices by 3.2 percent and
7 guests would accept that because of the added benefits
8 of the LID improvements, or whether they could hold
9 their prices constant but attract additional
10 occupancy, in effect increasing their guest count by
11 3.2 percent so that in either of those conditions or a
12 blend of those conditions is it possible for them
13 to -- is it reasonable to expect that they could
14 achieve a 3.2 percent increase in value.

15 Q And how much additional revenue would the
16 Marriott have to generate to recapture the costs of
17 the LID assessment?

18 A Well, we estimated that at a million seven and
19 a little bit over a million seven.

20 Q And this would apply to all of the revenue
21 sources, so the hotel, the parking, the retail, the
22 food and beverage?

23 A That's correct.

24 Q Given the current market conditions, is it
25 reasonable to expect that the Marriott would be able

1 to immediately generate this additional revenue?

2 A Given the market conditions January 1, it
3 would have been very difficult because so many new
4 rooms had opened in 2019. The market was softening.
5 We've already observed in other markets -- in other
6 subsets of the downtown market that room prices had
7 come down between 6 and 7 percent in 2019 as compared
8 to 2018 prices. Prior to that prices had been
9 increasing steadily.

10 So the market had really hit a wall in 2019.
11 If by current you mean current as today, then we hit a
12 much bigger wall. The Marriott, last time I checked,
13 it was still open, but they were renting -- the
14 Marriott -- all right. Take a breath. Step back.

15 The owners of the Marriott share the
16 sensitivity of the owners of the Four Seasons that I
17 talked about earlier, that they did not want us to
18 reveal anything about their historical or projected
19 performance. But they made an exception and said that
20 we could refer to their weekly STAR reports for the
21 month of March. They provided two reports.

22 I think one was for the week ending March 28
23 and one was the week ending April 4 to -- and the
24 purpose of that was so that we could see the impact of
25 the virus on their performance.

1 During that more recent week, they rented --
2 on one night they rented one room. On one night they
3 rented three rooms. Their occupancy was .3 percent
4 for that week, so it's -- I don't know why they're
5 open, but they -- at that time at least they had
6 remained open. So I don't know if that answers your
7 question, but the times were difficult as of the date
8 of our review, and times are extraordinarily difficult
9 now.

10 Q And I know you didn't perform a restricted
11 appraisal for this property to calculate a before
12 value, but had you done so, given what you know from
13 these STAR reports, would you expect this property to
14 see the same type of 10 to 15 percent decrease in
15 value between January 2019 and today?

16 A Between January 2020 and today?

17 Q Sorry. January 2020 and today.

18 A Yeah. There's no reason to think that it
19 would be different. Although, as I say, the examples
20 that I have so far are not from downtown Seattle.

21 Q And instead of raising rates, how much of an
22 increase in demand would the Marriott have to
23 generate -- and we're talking about room demand, I
24 believe -- to recapture the LID assessment?

25 A The increase in room nights depends on what

1 average daily room rate we assume for the property,
2 because it's -- if your room rate is higher, then you
3 need fewer room nights in order to generate the same
4 amount of revenue.

5 In prior testimony for another property during
6 February, still related to the Seattle Waterfront LID,
7 the City attorney raised what I thought was a very
8 valid point after I had time to think about it, which
9 was that in your analysis of the capacity required at
10 the hotels in order to meet the City's special benefit
11 ratio purely through occupancy, we were using an
12 average room rate for the year, annual average room
13 rate for the year.

14 But at the same time we were forecasting that
15 all of the new demand would occur during the peak
16 season, the six months of the year when most of the
17 leisure travel takes place. So for the Marriott, I
18 went back to our analysis, and Jesse and I together
19 estimated the seasonal room rate, the average room
20 rate that would be achievable just during those
21 months.

22 So the original rate we used, I believe, was
23 \$250. I don't have the original report in front of
24 me. Now with the seasonal rate, we're using \$317.
25 The impact is that if you were to compare our original

1 review with this current review that is shown as
2 Exhibit 90, fewer rooms are now required in order to
3 generate the increase in revenue that is projected by
4 the City. It is possible -- technically possible for
5 the hotel to accommodate the new demand. It's still
6 difficult, but it's not as extreme a case as it was in
7 our original analysis.

8 Because by using a higher average room rate, a
9 seasonal average room rate, it's clear that fewer
10 rooms would be required in order to make that -- in
11 order to reach that 3.2 percent threshold.

12 Q And under this updated analysis, about how
13 many additional guestrooms are you estimating would be
14 required to meet this demand? And I believe we're
15 looking at page 13 now.

16 A Page 12.

17 Q Twelve. Sorry.

18 A Yeah. We're estimating that 5,513 guestrooms
19 would be required. That would push the -- during this
20 peak season, the May to October season, the hotel,
21 based on its past performance, has 5,855 rooms
22 available.

23 So, theoretically, it's possible for the hotel
24 to accommodate those new rooms and create that
25 3.2 percent revenue growth without any increase in the

1 average rate. It would boost the occupancy rate for
2 the peak season to 94 percent, which it's difficult
3 for any hotel to achieve, let alone maintain, that
4 level of occupancy, but it is theoretically possible.

5 Q And so you sort of touched on this just now.
6 But is it reasonable to expect the Marriott will
7 generate this increased demand?

8 A I think it's reasonable to expect they might
9 generate some. I don't know that it would reach the
10 level that the -- that's projected by the City in the
11 3.2 percent. I don't know how that particular figure
12 is -- can be supported. But if you look at the share
13 of business that the Marriott gets through leisure
14 travel, it is more significant than it is for some of
15 the hotels that are in the uplands, that are up beyond
16 where the viaduct used to be.

17 So it's -- I think with the Marriott, it's --
18 it would be easier to make a case that having
19 waterfront improvements would help them. As to how
20 much it would help them, all we've demonstrated in
21 here in our review is that it's mathematically
22 possible for the increase to be 3.2 percent assuming
23 that room rates held constant. But that -- that
24 doesn't mean that it would necessarily be so.

25 Q And you've talked a little bit about general

1 occupancy rates in your testimony with regard to other
2 hotels. Has your testimony been generally that the
3 hotels in downtown Seattle it's reasonable to -- that
4 they generally see an occupancy rate of about 80 to
5 85 percent?

6 A For the last five years, that's been the
7 typical range. Prior to that the typical range was 75
8 to 80. Once Amazon really took off in the downtown
9 area, they bring in a lot of business. And the hotels
10 have capitalized on that.

11 And until 2019 the new supply really hadn't
12 kept up with it. There had been some additions but
13 not in a large scale. It's only in the past year that
14 there was so many new rooms that came in that
15 occupancy percentages began to decline even with the
16 high demand.

17 Q And 94 percent would be significantly more
18 than that average?

19 A Yes.

20 Q Can we talk a little bit about Mr. Macaulay's
21 spreadsheet for the Marriott, if you could pull that
22 up.

23 A Yep. Okay.

24 Q So did Mr. Macaulay use the same methodology
25 he used with respect to the other commercial

1 properties?

2 A Yes. It's the same.

3 Q And that is he applies a percentage increase
4 to -- a high-low percentage increase to income and
5 then makes high-low adjustments to cap rate to come up
6 with four scenarios?

7 A Correct.

8 Q And for the Marriott, the first two scenarios
9 assume that room rates will increase by 1.75 percent
10 in the low scenario and 2 percent in the high
11 scenario; is that right?

12 A I'm looking. Yes.

13 Q Is it possible to accurately conclude that the
14 reason for this incremental percentage increase is due
15 to the LID improvements?

16 A I don't believe so. I point out he also
17 assumes an increase in the occupancy rate of half a
18 point.

19 Q I see that. And that's in the high scenario?

20 A Yes.

21 Q And so he's going from 80 percent to
22 80.5 percent in the high scenario?

23 A Right. I don't recall seeing this in any of
24 the other hotels.

25 Q Has the Marriott, in fact, seen any increases

1 in occupancy due to the anticipated LID improvements?

2 A No.

3 Q Has the Marriott, in fact, seen any increase
4 in rates due to the anticipation of the LID
5 improvements?

6 A No.

7 Q And he also applies these same percentage
8 increases to the food and beverage revenue and the
9 parking and other income revenue; is that right?

10 A That's right.

11 Q Any explanation for why these percentage
12 increases were applied to the -- in the same way to
13 these sources of revenue?

14 A Referencing my earlier comment, he's either
15 assuming that all of the revenue comes from hotel
16 guests, or he's assuming that local patrons of the
17 restaurant would be willing to pay more because
18 they're dining near the waterfront improvements.

19 Q From your read of the spreadsheet in the final
20 study, is that clear -- is the basis for these
21 percentages clear?

22 A No. That's -- that's implied by these
23 results, but he doesn't actually state that that's
24 what he's thinking.

25 Q And for the third and fourth scenarios, he

1 assumes the net operating income is going to remain as
2 in the before condition, but he changes the cap rate
3 from 7.25 percent to 7.05 percent in the low scenario
4 and 7 percent in the high scenario?

5 A Right.

6 Q Is there any basis for -- is there any
7 explanation for these cap rate changes?

8 A There's -- there's no explanation. A test --
9 a sensitivity analysis might want to compare 7.25 and
10 7.0. That's a reasonable range of cap rates to make a
11 variation, but the difference between 7.05 and 7.00 is
12 infinitesimal. There's no way that it would be
13 supportable, but he's using this as just two of four
14 scenarios. It's not -- it's not his final value
15 conclusions.

16 Q Right. And so using these four scenarios, he
17 comes up with a percentage increase of 3.2 percent; is
18 that right?

19 A Yes.

20 Q Is this within the -- is this increase in
21 property value within the margin of error for
22 appraisers?

23 A Typically, we look at, you know, 5 percent as
24 being kind of a standard. But there's no -- there's
25 nothing in writing that says it's okay to be off by

1 3.2 percent. It's just that in practice if you're
2 that close there aren't a lot of objections raised
3 from clients, at least not bank clients.

4 Q 3.2 percent is a little higher than some of
5 the other hotel special benefit increases we've seen;
6 is that right?

7 A It's the highest that I saw among the
8 properties that we looked at.

9 Q And in your opinion as an appraiser of hotels
10 in the downtown Seattle area, would this higher
11 percentage put the Marriott at a competitive
12 disadvantage with other hotels that it is competing
13 with?

14 A Yeah. They -- they did identify for us who
15 they include in their competitive set in their STAR
16 reports, and most of those properties are up the hill.
17 They're business class, large properties in the center
18 of the CBD. Those hotels are all having a lot of
19 competitive pressure for room prices.

20 As I mentioned earlier, room prices were down
21 in 2019 by 6 or 7 percent. In that environment, to
22 assume that the Marriott would be able to raise prices
23 but that everybody else is cutting them or at least
24 holding them down would mean that the Marriott's
25 position with respect to room prices would be -- would

1 be increasing. They would be less competitive in
2 attracting guests to the hotel because their prices
3 would have gone up more than some -- more than their
4 competitors' prices. That assumes that the increase
5 in revenue was entirely because of an increase in
6 average rate.

7 Q And is there anything else you would like to
8 highlight with respect to your review of the Marriott?

9 A Well, just that -- you know, physically, it
10 appears to be closer to the waterfront, and I'm sure
11 that that -- I assume that that may have been in the
12 back of the appraiser's mind that the Edgewater and
13 the Marriott are both sitting down on Alaskan Way and,
14 therefore, they're closer walking distance and easier
15 walking distance to the LID improvements and,
16 therefore, they should have more of an impact.

17 But to say that the impact will be 3.2 percent
18 or 3 percent or to say it will be 1 percent or a half
19 a percent for the hotels that are further away,
20 there's nothing either in his study or in these
21 spreadsheets that convinces me that those numbers are
22 measurable.

23 And because they're so small, even as
24 presented, they're so close to -- so -- because they
25 fall within the -- what we normally think of as the

1 margin of error, it's difficult for me to say, yes,
2 the Marriott should, you know, be expected to increase
3 in value by 3.2 percent. I wouldn't be able to
4 endorse that result of the City and say that I agree
5 with it.

6 I might agree that the increase in value of
7 the Marriott would be more than for a hotel that's
8 further away from the waterfront. I would just be
9 reluctant to try to pin down the scale of that in
10 advance of the improvements actually being built so
11 that we can see some actual results.

12 Q And, in fact, you mentioned also that the
13 Marriott actually sits further to the north from the
14 LID improvements; is that right?

15 A Yeah. It's barely within the LID zone as
16 defined in the study. The Edgewater -- initially, the
17 Edgewater was actually outside the map, and then lines
18 were redrawn to include it. The Marriott, I think, is
19 two blocks south of the Edgewater. So it was -- it
20 was originally within the LID zone as it was defined,
21 but it's at the very northern end of it.

22 And if you walk from the Edgewater down to the
23 aquarium, there's -- it's -- it's not a super pleasant
24 walk right now. And I don't know that the street
25 improvements on the waterfront I don't believe that

1 they extend all the way to the Marriott.

2 Q And, in fact, if you look at Mr. Macaulay's
3 spreadsheet, it looks like that he notes that the
4 proximity to the park improvements is still at least
5 450 feet away --

6 A Okay. So that's --

7 Q -- according to Mr. Macaulay's spreadsheet?

8 A Yeah. Well, it's closer than the half mile --

9 Q Is that right?

10 A -- that the Hyatts were.

11 Q Yeah. Sorry. I forgot to finish. Is that
12 correct? Are you looking at his spreadsheet?

13 A I'm looking at his spreadsheet, but I'm not
14 sure where you're looking.

15 Q I'm looking at Row 8.

16 A Oh, at the top?

17 Q Yes.

18 A Oh, it doesn't -- all right. He's got the
19 proximity to Myrtle Edwards Park, and he's got the
20 proximity to the Waterfront Park at 450 feet. Yes, I
21 see that.

22 Q Okay. Is there anything else you would like
23 to add with respect to the Marriott?

24 A No.

25 MS. LIN: With that I think we are

1 concluding our direct examination of Mr. Gordon.

2 HEARING EXAMINER VANCIL: Okay.

3 Ms. Thompson, are you prepared for cross at
4 this time?

5 MS. THOMPSON: Yes, I am.

6 HEARING EXAMINER VANCIL: Before we get
7 started with that, I have -- one question I have is
8 the spreadsheets from the City appraiser, they are not
9 being introduced, but we're hearing testimony about
10 them. And what's the reasoning behind their
11 exclusion?

12 MS. LIN: I can let the City respond to
13 that. I can state my understanding of that, but it
14 might come better from the City.

15 MS. THOMPSON: Well, there has been a
16 discussion among the parties about the use of the
17 spreadsheets because it is a public hearing and
18 admitting them into the record would make them public
19 record. And my understanding is that Mr. Macaulay is
20 concerned about the, you know, proprietary information
21 in the spreadsheets, his process, etc.

22 And so the parties have entered into a
23 confidentiality agreement in which they agreed that
24 these spreadsheets could be discussed but they
25 wouldn't be made exhibits to this hearing.

1 HEARING EXAMINER VANCIL: What's the
2 proprietary nature of what's in the spreadsheets?

3 MS. THOMPSON: Well, my understanding
4 is that it's his process for performing the
5 appraisals.

6 HEARING EXAMINER VANCIL: And he
7 doesn't want -- I guess I'm just confused as to how
8 that's not already public information and why he would
9 not want that to be part of the hearing? I mean, I
10 guess I can just wait to hear from him when he's on as
11 a City witness, but it seems unusual.

12 MR. STILLWELL: Objectors will state
13 for the record that is the explanation we've been
14 given as well. And we have expressed concern that
15 because the methodology itself is at issue in this
16 hearing that it seemed odd to us to assert
17 confidentiality over these separates on the basis
18 of -- on grounds that the process is proprietary.

19 HEARING EXAMINER VANCIL: Well, I'll
20 work with what I get, but, yeah, there's been
21 significant testimony about it. And it is -- in some
22 respects, it's in the favor of the City for me not to
23 be able to see materials that objectors are discussing
24 because I, frankly, can't follow along with what
25 they're talking about.

1 But as objectors pointed out, it's the
2 appraiser's process is what's in question. And so if
3 he's obscuring that process without any clear reason,
4 that in itself can speak to the validity of the
5 process. I just don't -- do you know, Ms. Thompson,
6 are those sheets, are they -- I'm unfamiliar with
7 contractors working with the City that can assert that
8 right of proprietary nature, particularly of something
9 of this scale. Are those spreadsheets, then, not part
10 of the public record? Someone submitting a public
11 record request cannot access those?

12 MS. THOMPSON: Well, this issue -- I
13 mean, this is why the parties reached an agreement
14 with regard to the commercial properties. My
15 understanding is that Mr. Macaulay was objecting to
16 the public disclosure of the spreadsheets because
17 his -- he is an appraiser. He has his own appraisal
18 business, and part of that is, you know, his
19 individual process for preparing these appraisals.

20 There are his own competitors who -- some of
21 whom have testified in this hearing -- would be --
22 become privy to his process if these spreadsheets were
23 to become part of the public record. That -- that's
24 my understanding of his perspective, and if a public
25 records request was made for these commercial

1 spreadsheets, then he would, you know, be within his
2 rights under the Public Records Act to assert, you
3 know, an objection to that.

4 We have tried to resolve this privately among
5 the parties, and if we need to readdress that because
6 these are exhibits that the hearing examiner feels are
7 necessary to the case or because things have developed
8 in a certain way, then we can address that off the
9 record with the City and with Mr. Macaulay.

10 But at this point, my understanding is that
11 the position that Mr. Macaulay has taken is that he
12 considers these to be proprietary and have value in
13 maintaining, you know, some level of confidentiality
14 with these records.

15 So I'm happy to, when we have a break, address
16 this further with Mr. Macaulay and with Mr. Filipini,
17 but I understand what the hearing examiner is saying
18 about the testimony being heard about these documents
19 makes it difficult without seeing them to follow. So
20 I'm happy to address that.

21 HEARING EXAMINER VANCIL: All right.
22 And to give you some guidance, this is different than
23 the commercial objectors who have indicated they want
24 to shield some of their proprietary information.

25 Ultimately, there is a burden of proof they

1 have to show something, and that may clip their wings
2 a bit as far as being able to put their case on. I'm
3 not making a decision as to whether that has or not,
4 whether they can convey it.

5 But it is different when their appraisals are
6 not the subject of the appeal. Whether the
7 appraiser -- whether the appraisal or appraiser has
8 been done -- the appraisal has been done appropriately
9 is the question and their burden is to show that it
10 hasn't, they bring in whatever evidence they can
11 and/or are willing to, and that's a different question
12 than where an appraiser has done activity -- has
13 performed a duty for a public entity and that
14 appraisal is subject to strong scrutiny as to how it
15 was performed.

16 I'm not going to issue a directive that he
17 must disclose them, but I can only tell you from the
18 perspective of the decision maker in the matter
19 observing where I -- the issues are being raised as to
20 the voracity of that process, that process he's
21 identified that he thinks is proprietary, that in
22 itself raises some questions.

23 If it's so proprietary and so unique to him,
24 is it meeting industry standards? That's certainly a
25 question that would be raised later as I get into my

1 recommendation. And I don't want to wait until after
2 the record closes to have the parties aware that that
3 could be an issue. So I just raises an issue.

4 It's not a determination on my part. I will
5 certainly not compel the City or the appraiser to
6 disclose his working papers, but it's an odd stance
7 that I need to note for the record while parties have
8 an opportunity to do something about it.

9 So I'll leave you with that to proceed with
10 anything with it.

11 MS. LIN: And I'll just note also that,
12 since we're on the topic, the parties, the City and
13 the objectors, have come to an agreement with regards
14 to the Macaulay deposition transcript, and we are
15 ready to submit in a form agreed upon by the parties.

16 And I was more just wondering how you would
17 like me to submit that? I could just send it as a pdf
18 to Mr. Edlund-Cho or introduce it as an exhibit in the
19 hearing. Just how would you like me to actually make
20 that part of the record?

21 HEARING EXAMINER VANCIL: Yeah, for me
22 it's no different than any of the other documents you
23 submitted just as you have any exhibit.

24 MS. LIN: Okay.

25 HEARING EXAMINER VANCIL: Speaking of

1 exhibits, we have only up to this point admitted up to
2 Exhibit 87, and I know that we're into the 90s at this
3 point. And we've been using objectors' numbering
4 system. I don't have readily in front of me right now
5 how far we got, but are there additional exhibits?

6 MS. LIN: Right now, yeah, we've gone
7 up to Exhibit 90, so we would like to submit to the
8 record Exhibits 90, 89 -- and I'm not sure if
9 Mr. Stillwell already did 88, 87, 86, and 85.

10 HEARING EXAMINER VANCIL: Up to 87 have
11 been admitted. Eighty-eight has not.

12 MS. LIN: Okay. So we would -- we
13 would submit to the record, 88, 89, and 90.

14 HEARING EXAMINER VANCIL: All right.
15 Any objections to 88, 89, or 90?

16 MS. THOMPSON: No objection.

17 HEARING EXAMINER VANCIL: All right.
18 Eighty-eight, 89, and 90 are admitted.

19 (Exhibit 88, Exhibit 89, and Exhibit 90
20 were admitted.)

21 HEARING EXAMINER VANCIL: And let me
22 pause one more time before we go to City cross. What
23 is remaining for objectors in the way of witnesses for
24 the hearing?

25 MS. LIN: Today we have Mr. O'Connor

1 who, I believe, was on the line earlier but dropped
2 because he's going to be later, and we weren't sure
3 how long the cross-examination of Mr. Gordon was going
4 to go.

5 HEARING EXAMINER VANCIL: Right.

6 MS. LIN: And then we've got, I
7 believe, Mr. Gibbons coming on after Mr. O'Connor.
8 And just depending on how long daughters or sons goes,
9 we could easily get through both of those witnesses
10 today. And then for April 16 we would only have
11 Mr. -- Dr. Crompton.

12 HEARING EXAMINER VANCIL: Okay. For
13 the two witnesses you identified for today, how much
14 time do you anticipate on direct.

15 MS. LIN: I think with Mr. O'Connor I
16 can't imagine it would be more than 40 minutes and
17 then maybe an hour, but that would be stretching it.
18 And then with Mr. Gibbons, same thing, about an hour.

19 HEARING EXAMINER VANCIL: Okay. Just
20 going by rule of thumb that -- and this isn't a
21 binding requirement. It's just in my experience in
22 hearings that cross can often go about three-quarters
23 or so or even equal to the amount of time on direct.
24 We have, it sounds like, three witnesses, about three
25 hours' worth of testimony. One is already scheduled.

1 MS. LIN: I think that's -- I think my
2 estimates are generous estimates. I think those are
3 on the longer end.

4 HEARING EXAMINER VANCIL: Okay. The
5 only thing I'll note, then, is -- and, Ms. Thompson,
6 correct me if I'm wrong, but I think with Mr. Gordon
7 we have not just yesterday and today, but he was also
8 testifying for at least a day before Monday. And so
9 we've got almost two and a half days or so of direct
10 that she's now entering cross on. So I'm just noting
11 that it's reasonably possible for those witnesses that
12 you have remaining for objectors that they would go
13 tomorrow.

14 MR. GORDON: I think I just had
15 yesterday and today.

16 HEARING EXAMINER VANCIL: Oh, okay. Is
17 that correct, Ms. Thompson? Did you have an
18 opportunity to cross on --

19 MS. THOMPSON: No. I believe that
20 Mr. Gordon also testified on the -- let's see. It
21 would have been, I believe, the 12th of March he began
22 testifying.

23 MR. GORDON: Did I?

24 MS. THOMPSON: But there's -- yeah, I
25 don't think that he was on for very long on the -- on

1 the 12th, but --

2 HEARING EXAMINER VANCIL: Right.

3 MS. THOMPSON: -- my notes don't
4 indicate a time.

5 MR. GORDON: Oh, yes. Because I was
6 testifying from the Perkins office downtown.

7 HEARING EXAMINER VANCIL: Right. So
8 all of that is what we're getting cross on now, which
9 could take a period of time within Ms. Thompson's
10 discretion. Again, just noting for scheduling
11 purposes and coordination that the objectors may want
12 to alert their witnesses accordingly.

13 And with that we can -- let's turn to
14 cross-examination then, please.

15 E X A M I N A T I O N

16 BY MS. THOMPSON:

17 Q So this is Gabrielle Thompson on behalf of the
18 City. Good morning, Mr. Gordon.

19 A Good morning.

20 Q So I wanted to start with the limited -- or
21 restricted appraisals that you prepared for some of
22 the hotel clients, and you've since produced some
23 supplemental tables for the restricted appraisals that
24 include the actual performance numbers of the hotels;
25 is that correct?

1 A That's correct for six of the eight hotels in
2 this current section.

3 Q And your restricted appraisals and your
4 supplemental tables include market data from a
5 competitive set that was identified by each of the
6 hotels; is that correct?

7 A Yes.

8 Q And my question is: In the restricted
9 appraisals, you state a conclusion of current market
10 value for each of the hotels, and is that current
11 market value based on the actual performance numbers
12 of the hotels, or is it based on the market data?

13 A It's based on both. The things that went into
14 our estimates of value -- we valued each hotel as of
15 January 1 of this year. The things that -- the
16 information that went into that was prior market
17 information, prior historical performance numbers from
18 those hotels, and those were used to develop our
19 forecast of how the property would perform in the
20 future. Those future estimates are what are
21 capitalized to come up with our opinions of value.

22 Q Okay. So the -- can you just describe what
23 role the market sets played in your estimates of
24 value?

25 A Well, our -- the process of coming up with a

1 forecast of room revenue is to look at how the market
2 has performed in the past, how each of these hotels
3 has performed in the past in relation to their market,
4 project the market forward taking into account in this
5 case, in many of these cases, the development of
6 additional hotels, and then apply their historical
7 position to our forecast of the market.

8 So we're saying our -- you know, we -- for
9 example, we historically have had a room rate that's
10 5 percent above the market. This year we're
11 renovating or somebody is dropping out or some new
12 hotels are adding in. There's some reason to think
13 that the position might -- instead of being 5 percent
14 above, might be 10 percent above or it might just
15 match the market.

16 So our forecast is not just duplicating the
17 historical position. We're trying to take into
18 account changes that might occur in the property or in
19 their competitive set.

20 Q So the ultimate value -- the current market
21 value that you state for each hotel is dependent on
22 part in the market set that the hotel owners or
23 managers presented you with; is that right?

24 A Yes.

25 Q And so a different market set could

1 potentially result in a different forecasted value of
2 each hotel?

3 A It's possible, but it's less likely. And the
4 reason I say that is that we've been looking at the
5 historical position of the subject hotel. Let's just
6 use -- say the Grand Hyatt. We've been looking at
7 their historical position in relation to their market
8 and using that position as a basis for a component of
9 our forecast.

10 If we change the comp set and we use different
11 hotels to compare to, that would be true, both
12 historically and in the future. So with one comp set,
13 our average room rate might be -- might have been in
14 the past 5 percent above the set. And we project out
15 5 percent above the set if nothing changes.

16 Using a different comp set, it might look like
17 our average room rate is 10 percent below the comp
18 set. But if we extend that same set, that second set,
19 into the future and project, again, a position of
20 10 percent below the market, the end result for our
21 hotel might be the same, at least within rounding
22 error, would be -- would be essentially the same
23 regardless of which comp set we use.

24 This issue has come up with lenders where they
25 say, well, how did you pick your competitive hotels,

1 and why didn't you include A and why didn't you
2 include B? I'm more than happy to change them in
3 those cases because I know that the end result really
4 isn't going to change.

5 Q Okay. So in looking through some of the
6 supplemental tables that you've provided, there are
7 certain aspects of the analysis such as the projected
8 average daily room rate and the ratio to market. And
9 is that something that involves an assumption that
10 you're making about how the hotel will perform with
11 respect to the market?

12 A I wouldn't use the term "assumption." I would
13 say it's a judgment.

14 Q Judgment?

15 A But yes. In essence, yes. It's -- when you
16 look at Table 4, for example, in any of these sets,
17 that's showing the historical position of the subject
18 hotels with respect to occupancy and room rate. And
19 those numbers are -- those are hard numbers based on
20 actual market numbers and actual subject numbers.

21 When we go to Table 5, which is the forecast
22 of market position, that's my judgment call as to
23 where the occupancy index and the room rate index will
24 fall.

25 Q And so I believe yesterday you talked a bit

1 about the room rate index for some of the hotels that
2 are either new or newly renovated, and I believe what
3 your testimony was is that in those cases you -- you
4 applied a higher room rate index because the either
5 newness of the hotel or the new renovations would
6 justify higher room rates; is that right?

7 A Yes.

8 Q And did you apply this same room rate index
9 percentage for each of those either new or newly
10 renovated hotels?

11 A No. Because they don't all start at the same
12 place. If a hotel was running 90 percent -- had a
13 room rate index of 90 percent prior to renovation, it
14 might bump up to 100 percent or 105. If a hotel was
15 running 100 percent room rate index, matching the
16 market in prices and then they renovated, then they
17 might bump up to 110.

18 Again, it's a judgment call, but it's based on
19 having seen what happened with other hotel renovations
20 over the years ago. You get some bump in most cases
21 if the renovation is observable to the guest. If
22 you're -- if you're redoing the kitchen and they never
23 see it, they don't care. They just expect the food to
24 get cooked. But if you're fixing up the guestrooms or
25 the lobby or the dining area of the restaurant, then

1 there could be some positive impact.

2 Q So you mentioned that in the Table 5 of the
3 supplemental tables that you prepared for each of the
4 hotels. These are projections that you've created; is
5 that right?

6 A Yes. The market numbers were created in
7 Table 3.

8 Q Okay.

9 A They are still my forecast. In Table 5 I'm
10 comparing my forecast to the market and implying
11 indices for occupancy and room rate, and that creates
12 any forecast for the subject.

13 Q So I wonder, could you identify in Table 5 the
14 portions of this table that you created as a matter of
15 judgment?

16 A Well, the -- the -- as I say, parts of them
17 come from Table 3. The ones that are unique to
18 Table 5, the lines that are judgment calls, are the
19 indices, so the occupancy index, there's a line that
20 says occupancy index, that would be a judgment. And
21 the room rate index line would be a judgment.

22 Q And because those percentages are judgments,
23 the application of them, does that result in a number
24 that's also a judgment?

25 A Yes.

1 Q So the subject room rate and the subject
2 occupancy, those are figures that are direct from your
3 judgment calls?

4 A Yes. And every figure that follows is going
5 to be a judgment call. All the revenue and expense
6 line items involve judgment on the part of the
7 appraiser.

8 Q So it's fair to say, then, that if another
9 appraiser was hired to perform this same task that
10 that appraiser could come up with different judgments
11 of the room rate, the occupancy, and the overall value
12 of the hotel; is that right?

13 A Yes. I'd be surprised if they didn't.

14 Q And why is that?

15 A Because all of us appraisers have different
16 opinions. This is all that these papers are is my
17 opinion. We're hired on the basis of our experience,
18 our expertise, our objectivity, our knowledge of the
19 market, and that is supposed to give our opinions some
20 credibility. But it's still an opinion.

21 Q And so when you were preparing your appraisals
22 for the hotels, did you -- you used the income
23 approach to value; is that right?

24 A Yes.

25 Q And you mention in your appraisal reports

1 the -- some comparable sales of hotels in the last
2 couple of years; is that right?

3 A Yes. I think there's one paragraph where I
4 reference sales. I went back and looked at all of the
5 upscale hotel sales that had taken place within a
6 certain time period so we had that, and that's already
7 been submitted as evidence.

8 Q Okay. And so how did those comparable sales
9 inform or affect your analysis of the value of the
10 hotels?

11 A They give us a range. They allow us to at
12 least bracket the values per room that we're coming up
13 with. The units of measure for hotel sales is most
14 common the price per room, but the price per square
15 foot could also be relevant. And I tried to look at
16 both measures.

17 The range of all those sales is pretty wide.
18 You've got sales like the Hotel 1000 that was, just
19 going off memory, somewhere around 700,000 a room,
20 which was a price we'd never seen before in any sale.
21 And then you've got -- I won't call them lower end
22 sales, but sales that were toward the bottom of the
23 range that were in the 200,000 per rooms.

24 So you didn't see a consistent enough pattern
25 to say, well, I know exactly what our value should be

1 just based on the sales. But I used them to say
2 here's the -- here's the range, and, hopefully, we
3 fall somewhere within that range.

4 Q And did you -- for each of the hotels that you
5 analyzed, did you make that calculation of the price
6 per room based on your calculated value?

7 A Yes. I don't -- I don't know that we put it
8 in the appraisals themselves, but, yeah, it's
9 something that we would do automatically.

10 Q And did you consider/compare that price per
11 room calculation to the comparable sales that you
12 reviewed?

13 A Only to the extent of looking at the range and
14 see where we were with respect to the bracketing and
15 with respect to the hotels that had sold that seemed
16 most similar to ours, but we did not do a quantitative
17 adjustment grid which is another method of valuation.

18 Q Forgive me. One minute while I look back
19 through my notes here?

20 A Sure.

21 Q So yesterday and today you've been asked some
22 questions about the special benefit calculations that
23 Mr. Macaulay made for the hotel properties; is that
24 right?

25 A Yes.

1 Q And I just wanted to confirm what experience
2 do you have in calculating special benefits?

3 A Zero.

4 Q And is it true that you were not hired to
5 render an opinion about -- or rather to make an
6 independent calculation of the special benefit that
7 the hotel may or may not receive as a result of the
8 LID improvements?

9 A That's correct. My role was to estimate the
10 before value, the current value.

11 Q And to the extent you know, was Mr. Shorett
12 hired to calculate the special benefits associated
13 with the LID improvements?

14 A As I understand, he was not. He was hired to
15 review the analysis and the study and comment on it
16 but not to come up with an alternate number.

17 Q And so is it fair to say, then, that your
18 task, with respect to these hotels, was to determine
19 the current market value of each hotel?

20 A Yes.

21 Q And as we discussed earlier, those opinions
22 about the current market value of the hotels are based
23 on your judgment and may not line up with another
24 appraiser's opinions?

25 A That's correct.

1 Q Next, I'd like to ask you about the
2 depreciation rates that are applied in your analysis
3 for each of the hotels.

4 A Sure.

5 Q So how -- how do you calculate the cost of
6 personal property?

7 A There is an inexact science. We do appraisals
8 of new hotels where we have the budgets for what
9 they're spending on furnishings and equipment, and
10 that tends to be presented in amounts per room for
11 most hotels.

12 So I may have said previously that for a very
13 simple limited-service hotel, the cost of the
14 furnishings and equipment, which would be the bedding
15 and the dressers, the case goods, the linens in the
16 guestrooms and whatever furnishings and equipment you
17 have in common areas, computers at the front desk,
18 chairs in the meeting rooms, that sort of thing, if
19 you add all that up, for a very simple limited-service
20 hotel, they tend to be around 5, 6, 7,000 dollars a
21 room. For a midscale property with a breakfast room
22 and meeting space, they might be in that 10 to 12,000
23 dollar a room range. For full-service hotels, you're
24 looking at 15 to 20 to 25, often higher than that if
25 it's extremely high quality.

1 There's a lot of variation in there, and it
2 depends a bit on the brand of the hotel. Because the
3 franchisor will mandate what you have to put in the
4 rooms, and often they will sell you the materials or
5 arrange a place where you're going to buy the stuff.
6 But these are ballpark numbers, but I think that
7 they're -- that they fall within a reasonable range.
8 For these full-service hotels, I believe I was, in
9 most cases, at 20,000 or I may have gone up to 30,000
10 for the Four Seasons.

11 Q Okay. So the value of the personal property
12 listed in your reports is another judgment that you've
13 made?

14 A Correct. And it's -- the personal property is
15 deducted from the overall value in order to net out
16 the real estate value.

17 Q And so the figure for the value of the
18 personal property, is that the replacement cost of
19 personal property?

20 A Yes. The replacement cost refers to the cost
21 new, so when I say \$20,000 a room, that's if you were
22 to go out today and buy it, you would be spending
23 about \$20,000 or so on furnishings and equipment. If
24 it's an existing hotel, as all of these are, there's
25 some depreciation that has taken place.

1 So in the table I show, I'm estimating
2 depreciation, and, again, I don't get too exact on it.
3 It's going to be 10 percent, 20 percent, 30 percent,
4 40. Based on how old the hotel is, how long it's been
5 since it was already built or renovated. Once a hotel
6 hits 50 percent -- and maybe I'm restating what I've
7 said before. Once a hotel hits 50 percent
8 depreciation, I tend to hold it there as long as the
9 items are being replaced on a cyclical basis.

10 So if half the items are newer than 50 percent
11 and half the items are older than 50 percent -- the
12 average life that we assume is 10 years, and that is
13 an assumption. So if the property is five years old,
14 it would be at -- it would be -- the furnishings would
15 be 50 percent depreciated. If you keep replacing
16 them, then in year six, it will still be 50 percent.
17 Year 10, it will still be 50 percent.

18 If you go to the hotel and discover that
19 everything is falling apart, they haven't been doing
20 replacements, the depreciation can go higher.

21 Q So, next, I want to shift to the appraisal
22 review reports that Kidder Mathews prepared --

23 A Okay.

24 Q -- and, specifically, the forecasts that we've
25 been discussing, both today and yesterday. And for

1 the hotel properties, were the same forecasts
2 developed across each of the properties? Is that fair
3 to say?

4 A I'm not sure what you mean by forecasts.

5 Q Well, so we have -- we have a number of these
6 reports, and it looks to me like for each of the
7 properties Kidder Mathews prepared a forecast with
8 respect to revenue and then a forecast with respect to
9 demand; is that right?

10 A What we were doing was estimating how much
11 additional -- how many additional rooms would be
12 necessary in order to reach the special benefit ratio
13 in the City's study. And those -- the methodology was
14 the same for each appraisal, but the numbers varied.

15 Q Sure. And earlier Ms. Lin was asking you
16 about these forecasts, and she phrased it as with
17 respect to the --

18 MS. LIN: Objection. He's clarified
19 that he doesn't see this as a forecast, and I think
20 that that term is mis -- I think it -- it's not an
21 accurate description of what his analysis does. He's
22 estimating how many additional rooms. I mean, I just
23 think that he's clarified that he doesn't view this as
24 a forecast. That implies some sort of future -- I
25 think that the date of the final study is

1 October 2019, and the assumption here is that as of
2 October 2019, which is actually in the past, this is
3 the number of guestrooms and the occupancy and the
4 amount of revenue you would need to -- you would need
5 to generate in order to meet the LID assessment.

6 HEARING EXAMINER VANCIL: So the
7 objection is -- the objection is that there's been a
8 mischaracterization of testimony. Please in the
9 future make sure that the question gets to be asked
10 before -- Ms. Thompson gets to finish asking the
11 question before we assume content.

12 Ms. Thompson, do you want to rephrase, or do
13 you want to respond to the objection?

14 MS. THOMPSON: Yeah, I'll rephrase.
15 I'm sorry. I believe the word I was meaning to use
16 was a feasibility analysis, not a forecast.

17 MR. GORDON: That's fine.

18 BY MS. THOMPSON:

19 Q So, Mr. Gordon, is it fair to characterize
20 these pieces of the appraisal review as a feasibility
21 analysis?

22 A Yes.

23 Q Okay. My apologies. So in these feasibility
24 analyses, Ms. Lin was asking you whether they
25 represent the amounts that the hotel would need to

1 recapture the cost of the LID assessment. Do you
2 recall those questions?

3 A Yes. I'm -- I don't recall the specifics of
4 that question, no. The purpose of these was to
5 estimate how many rooms would be necessary to create
6 the special benefit. Is that -- I may be saying the
7 same thing that you're saying.

8 Q Yeah. I just wanted to clarify what the
9 purpose of the analysis was, because it looks to me
10 like the -- the feasibility analysis is with respect
11 to the increase in value that is projected in the ABS
12 study and not to the cost of the LID assessment
13 itself; is that correct?

14 A I think that is correct, yes.

15 Q I just wanted to clarify that.

16 So in these feasibility analyses, you have
17 calculated -- with respect to the first equation here,
18 required revenue increase, you've calculated what the
19 hotels would need to do in order to increase the value
20 of the hotel to the point that's estimated in the ABS
21 study; is that right?

22 A Yes, that's correct.

23 Q And so this value increase under these
24 calculations, is that assumed to occur immediately?

25 A Well, yeah, everything is stated in current

1 dollars, so it's, basically, assumed to occur in the
2 current year, the year -- the 12 months following the
3 date of the study. So it --

4 Q So it --

5 A I'm sorry. It would be the fiscal year ending
6 September 30 of 2020.

7 Q Okay. So this -- under this calculation the
8 feasibility is being assessed in terms of in the next
9 12 months what the hotels would need to do in order to
10 increase their value to the point that's predicted in
11 the study?

12 A Correct.

13 Q And in the next feasibility analysis that
14 you've prepared discussing required demand increases,
15 you spoke earlier about how, with respect to the
16 Marriott Hotel, you revised the report to use a
17 seasonal average daily room rate; is that right?

18 A That's correct.

19 Q And is that because the feasibility analysis
20 is limited to the six months' peak season that you've
21 identified for the hotels?

22 A Yes.

23 Q Did you update the other appraisal reviews to
24 reflect the seasonal ADR rates?

25 A No, we didn't. It was fairly time consuming,

1 and we decided just to use this one as a test and see
2 what the impact was.

3 Q So is it fair to say that the seasonal ADRs
4 for each of the hotels would be higher than the annual
5 ADR?

6 A Yes.

7 Q So the reports that you haven't updated, the
8 feasibility analysis for demand increase required,
9 would be adjusted downward?

10 A That's correct. Fewer new rooms would be
11 required in order to reach the threshold.

12 Q I wanted to ask about the Four Seasons in
13 particular. You testified earlier that it's mainly a
14 business travel hotel; is that right?

15 A Yes. I mean, it's high -- it's a very, very
16 high-end hotel. So it gets high-end business, some
17 high-end leisure, some high-end group, but the
18 majority would be business.

19 Q So for the Four Seasons, does it have a peak
20 leisure season?

21 A Yes, but it only applies to a small share of
22 their business.

23 Q So --

24 A So it's not -- it wouldn't be as dominant as
25 it would in a more leisure-oriented hotel like the

1 Marriott.

2 Q So for a hotel like the Four Seasons, a
3 feasibility analysis about required demand increase
4 that's based only on six months out of the year, is
5 that a fair analysis of the demand that's possible at
6 that hotel?

7 A It's not a particularly accurate analysis.
8 It's something that -- it's an exercise that we went
9 through with each hotel, and we tried to maintain the
10 same methodology. But that is a valid, you know,
11 criticism of its -- of the degree of relevance.
12 Because a hotel that did not have any leisure travel
13 or wasn't expecting to be able to attract any leisure
14 travel, then it wouldn't be relevant at all.

15 Q And, similarly, even for hotels that do have a
16 fair amount of leisure travel as part of their
17 business, is it fair to say that outside the peak
18 months it's still operating as a hotel and is still
19 receiving income from renting rooms?

20 A Oh, yes.

21 Q So in the feasibility analysis related to
22 demand which is limited to six months in the appraisal
23 review reports, that doesn't provide the full picture
24 of demand throughout the year; is that right?

25 A Well, no, but that wasn't our intent. We're

1 trying to look at the marginal difference in revenue
2 and income and value, not the aggregate value. So if
3 we say that we're going to add a certain number of
4 rooms during the summer period, here's how much
5 additional revenue we get. And it doesn't much matter
6 what the total was. We're just saying we needed to
7 get this much more in order to get the amount of
8 revenue increase that is assumed in the study.

9 Q But the -- when you limit yourself to six
10 months, that increases the -- it restricts the overall
11 capacity for the hotel to meet that demand that will
12 be necessary to increase revenue, does it not?

13 A The capacity is still there in the winter.
14 You still have the rooms, but we didn't see that, by
15 and large, you would be able to attract new leisure
16 guests to come during the winter. That's why we
17 focused on the six months, the peak six months, rather
18 than the off peak.

19 Q So, next, I want to move to some of the
20 testimony that you gave yesterday about the effects of
21 COVID-19 on the hotel industry.

22 A Sure.

23 Q And I wanted to start with some questions
24 about the general nature of providing appraisals for
25 the value of properties.

1 So when somebody hires you to appraise the
2 current market value of a property, do you have to
3 pick a time, like a date in time, to stop analyzing
4 the value of the property?

5 A Yes. Whatever the effective -- they refer to
6 it as the effective date of value. Most often it's
7 the date that you actually go and see the hotel,
8 because if a place burns down a day after you're
9 there, you don't -- that would make -- that would
10 be -- that would have an impact. So you set the date
11 and say, okay, as of this date, we're not looking at
12 anything that occurred past that.

13 In the case of the City study, that date was
14 October 1, 2019. In the case of our appraisals, it
15 was January 1, 2020.

16 Q And so what's the purpose of selecting an
17 effective date for an appraisal?

18 A I'm not sure how to answer that. It's an
19 element -- it's a requirement of the appraisal -- it's
20 a requirement of appraisal methodology that you have a
21 date certain when you are valuing the property. You
22 can't assume that we'll value the property today and
23 that value will stay the same indefinitely.

24 The person using the appraisal has to be able
25 to understand the context in which it was done, and by

1 establishing a date of January 1, 2020, the user knows
2 that we took into account or should have taken into
3 account generally available information that preceded
4 that date. But nothing that -- nothing that took
5 place after that date.

6 Now, if we become aware of something -- and,
7 obviously, we don't finish the appraisal in one day.
8 So if we're working on it all through January and
9 during that period we become aware of something that
10 may have an impact on value, it's a courtesy to notify
11 the client and let them know that something is going
12 on and they might want to consider changing the
13 effective date, having us reinspect the property or at
14 least update all of our market information.

15 And since we've already started working on one
16 date, it would cost them a little more, and most
17 clients don't want to pay any more. So they're
18 usually happy to leave the date alone. But that's
19 always an option, to revise the effective date.

20 Q So yesterday you testified about some
21 appraisals you've performed since the COVID-19
22 outbreak has begun?

23 A Yes.

24 Q And you noted that there has been a decrease
25 in the current market value of hotels in the downtown

1 Seattle area -- or excuse me. I believe you said that
2 you had appraised some hotels that aren't in the
3 downtown Seattle area; is that right?

4 A That's right. One of them is in downtown
5 Bellevue. One is in downtown Portland, east side of
6 the river but still generally downtown Portland, and
7 two are in Pierce County.

8 Q Okay. And so your testimony was that you did
9 see that the overall market value of those hotels had
10 gone down because of the virus?

11 A Yes. The current market value had gone down.

12 Q What does the occurrence of something like the
13 COVID virus, what kind of impact does that have on
14 appraisals that were prepared with effective dates
15 before the virus outbreak? So, for example, your
16 restricted appraisals were performed in January. So
17 what impact does the virus have on your appraisals?

18 A None on the appraisals themselves. On the
19 suitability on the values for future decision making,
20 it could have an impact, but it doesn't affect what's
21 in the appraisal itself.

22 Q And why is that?

23 A Because the events took place after the
24 effective date. That effective date of value is an
25 important date. That's -- that's a cutoff point.

1 That's where time stops, and nothing that takes place
2 after that should be made part of that appraisal.

3 I don't want to mislead. The appraisal itself
4 may have forecasts of future events, future
5 performance, future income, but no external factors
6 that take place after the effective date of value
7 should be considered.

8 Q And yesterday Ms. Lin asked you whether it was
9 or is inherently speculative to base the value of a
10 property on forecasted events that haven't yet
11 occurred. Do you remember that question?

12 A Not precisely. All of our appraisals include
13 our expectations, take into account our expectations
14 of what's going to occur in the future.

15 Q And what does relying on forecasted events do?
16 Does that -- does it affect the reliability or the
17 accuracy of your appraisals?

18 A Well, not really. The appraisal is to come up
19 with an opinion of value as of a certain date, and if
20 there's a general expectation that the markets are
21 going to improve or that a new hotel is going to be
22 built, and that's what's entering into the thinking of
23 investors who might purchase the subject hotel, then
24 that should be incorporated in our appraisal as well.

25 You would not want to incorporate assumptions

1 that would not be generally acceptable, assumptions
2 that would not be commonly held among market
3 participants. You wouldn't want to assume that the
4 sun will not come up tomorrow. And that -- that would
5 create a not incredible result. I'm not sure I
6 answered the question.

7 Q And I have another question about the
8 feasibility analysis and the appraisal review reports.

9 A Sure.

10 Q What do these feasibility exercises -- let me
11 restate that. Do the feasibility calculations have
12 any effect on the current market value of the
13 properties?

14 A No.

15 Q So it's not typical in your practice to assess
16 the feasibility of a hotel's capacity to increase
17 revenue or demand as part of valuing the hotel?

18 A The methodology that we used here in these
19 reviews that I think was created for this purpose, for
20 this specific appeal, I've not used it or seen it in
21 previous appraisals. You are trying to project how a
22 hotel will perform, but the notion of trying to see
23 whether you could squeeze in enough rooms to come to a
24 certain result, that's pretty unique to this appeal.

25 MS. THOMPSON: Thank you. No further

1 questions.

2 E X A M I N A T I O N

3 BY MS. LIN:

4 Q I just have a few questions on redirect.

5 You've -- you just testified that some of the numbers
6 in your table sets, in particular Table 5 and the room
7 rate index and the occupancy rate index, these are --
8 and, in particular, the numbers that are forecasting
9 future revenue, that these are matters of judgment.

10 Are these -- is your judgment informed by the actual
11 historical data from the hotels?

12 A Yes. It's informed by the historical data of
13 the hotel that we're appraising, the performance of
14 its competitive market and our expectations with
15 regard to inflation.

16 Q And would you expect your opinion to vary
17 widely from another appraiser?

18 A Well, I would expect it to vary. I've never
19 seen two appraisers sit down -- and the joke is you
20 get six appraisers together, you get eight results.
21 But the -- I wouldn't expect that a competent
22 appraiser familiar with the hotel market and familiar
23 with that property type would look at the same
24 information that I had and come up with a wildly
25 disparate answer. I think it would be within a

1 reasonable range of each other.

2 Q And is that because you testified your
3 judgment is based on objectivity, historical data from
4 the hotels themselves, knowledge of the market, and
5 your expertise?

6 A Well, yes. And I'd add knowledge of that
7 property type. There's a tendency for people to think
8 all real estate is the same, all appraisers are the
9 same, anybody can appraise anything. That's really
10 not the case with complex property. There are half a
11 dozen or more appraisers in Washington who are very
12 competent to appraise hotels, but not everybody is.
13 But if you got those half dozen together and you
14 showed them all the same material that I had, I think
15 they would come up with similar answers.

16 Q And so even though it's a matter of judgment,
17 would you consider this a matter of informed judgment?

18 A Yes.

19 Q And without that expertise and that
20 information from the hotels, would you have been able
21 to make an informed judgment?

22 A No.

23 Q And you testified about your experience
24 calculating special benefits. I'd like to just ask
25 you a couple questions. You do have experience -- you

1 do have experience valuing hotel properties; correct?

2 A Yes. I've appraised -- completed about around
3 690 hotel appraisals in my career.

4 Q And in those appraisals have you ever been
5 asked to adopt an assumption about a future event?
6 Maybe, for example, have you ever been asked to adopt
7 an assumption about zoning or permitting or
8 contamination?

9 A Yes. It would be -- it's less common, in
10 fact, quite rare, but sometimes we're asked to do two
11 different scenarios --

12 Q Okay.

13 A -- and say here's the hotel in this scenario
14 and here's the hotel in this scenario. It doesn't
15 happen very often.

16 Q When you are asked to do so, does that -- does
17 that assignment look similar to what is asked of an
18 appraiser when they are asked to calculate a special
19 benefit?

20 A As I say, I'm not -- I'm not -- I don't
21 represent myself to be an expert in special benefit
22 appraisal or eminent domain or anything like that.

23 Q But in terms of calculating a value of a
24 property in one scenario versus in another scenario?

25 A Yeah. We do, do that and make comparisons.

1 It generally is accompanied by an extraordinary
2 assumption or a hypothetical condition.

3 Q You also testified that in your estimates of
4 the cost of personal property that's a matter of
5 judgment. Would you expect another appraiser, a
6 competent appraiser, to come up with estimates that
7 varied widely from what you came up with?

8 A No. They would probably vary, but probably
9 not widely.

10 Q And is that because there's some objectivity
11 to the approach?

12 A It's because you can find out what furnishings
13 and equipment costs new, and the notion of a 10- or
14 12-year useful life is fairly widely accepted. The
15 idea of using straight-line depreciation ratios is
16 common. It's not universal, but it's fairly common.
17 So all of the elements that go into the estimate of
18 depreciated value of personal property are -- they're
19 something you can find in the industry and in general
20 market data.

21 And somebody else might come in and say, well,
22 I think it would be 25,000 a room or 20,000 or 15, but
23 they -- the methodology, the approach, would be the
24 same.

25 Q Okay. And then in your -- in your table sets,

1 there is some information -- there are some instances
2 where you're looking at factors that might affect
3 valuations. So we talked a little bit about
4 renovations or incoming new inventory.

5 These are future events that you think might
6 affect value; right?

7 A I didn't hear the first word. I heard
8 incoming inventory, but what did you say right before
9 that?

10 Q Renovations?

11 A Renovations and incoming inventory, yes, yeah.
12 And I do take those into account.

13 Q And so it is your testimony that there are
14 some -- in your expertise -- in your experience as an
15 appraiser of hotels, there are certain factors, future
16 factors, that do affect the value of hotels?

17 A Yes.

18 Q Is an incoming park usually one of those
19 factors?

20 A I have not seen it in any prior appraisal
21 work.

22 MS. LIN: I have no other questions.

23 HEARING EXAMINER VANCIL: Thank you,
24 Mr. Gordon.

25 Counsel for objectors, let's see, you have two

1 more witnesses now; is that right?

2 MS. LIN: Yes.

3 HEARING EXAMINER VANCIL: And I'm
4 sorry. It was Mr. Gibbons and I don't recall the name
5 of the other.

6 MS. LIN: Mr. O'Connor, Brian O'Connor.

7 HEARING EXAMINER VANCIL: I think since
8 we're so close to the lunch hour it doesn't make sense
9 to get started with another witness. Why don't we
10 break for lunch and we will return at 1:15 and
11 continue with objectors' next witness. Are there
12 exhibits that we need to get introduced to the record,
13 admitted?

14 MS. LIN: I believe you have all of the
15 exhibits from Mr. O'Connor, and let me -- a lot of
16 e-mails that have been --

17 HEARING EXAMINER VANCIL:

18 Mr. Edlund-Cho, what are we admitted up
19 through?

20 MS. LIN: Oh, for right now you're
21 talking about.

22 HEARING EXAMINER VANCIL: Right.

23 MR. EDLUND-CHO: Yes. We've admitted
24 up to Exhibit 90.

25 HEARING EXAMINER VANCIL: Okay. And

1 did that cover everything for Mr. Gordon?

2 MS. THOMPSON: Yes.

3 MR. EDLUND-CHO: Yes. I believe all of
4 the exhibits regarding Mr. Gordon, at least sent from
5 Ms. Lin, ended at Exhibit 84 as Mr. Stillwell provided
6 Exhibits 85 to 90, I believe, or 91.

7 HEARING EXAMINER VANCIL: So the 91 and
8 92, the appraisal review of the Helios and another
9 item that's mentioned, numerals, those are for later
10 witnesses?

11 MS. THOMPSON: Yes. And I believe that
12 Mr. Stillwell will be sending one more exhibit, and
13 then we'll also include the deposition transcript of
14 Mr. Macaulay's. We can get that into the record.

15 HEARING EXAMINER VANCIL: Certainly.
16 That's fine. We'll take that up at 1:30 when we
17 return from lunch. Thank you, all.

18 (A luncheon recess was taken.)

19 HEARING EXAMINER VANCIL: And we return
20 to objectors. Welcome back, Mr. Stillwell.

21 MR. STILLWELL: Thank you. Jake
22 Stillwell on behalf of objectors from Perkins Coie. I
23 haven't had any further internet issues, so hopefully
24 that was just this morning, and I appreciate everyone
25 being flexible and allowing Ms. Lin to finish for me.

1 HEARING EXAMINER VANCIL: And thank you
2 for working through those and coming back.

3 MR. STILLWELL: Of course.

4 Objectors would next like to turn to Case
5 Number 0441 of owners Equity Residential, and it's for
6 the Helios apartments. And objectors would like to
7 call as expert witness Brian O'Connor who I believe is
8 on the line.

9 HEARING EXAMINER VANCIL: Yes.

10 MS. THOMPSON: Mr. O'Connor has
11 testified previously, but I'm not sure if you would
12 like to swear him in once again.

13 HEARING EXAMINER VANCIL: I will just
14 do that for sake of form.

15 Mr. O'Connor, do you swear or affirm that the
16 testimony you'll provide in today's hearing will be
17 the truth?

18 MR. O'CONNOR: I do.

19 HEARING EXAMINER VANCIL: Thank you.
20 Your audio is not coming through particularly well,
21 but I did see you did get sworn in.

22 Mr. Stillwell, your witness.

23 MR. STILLWELL: Thank you.

24

25

1 E X A M I N A T I O N

2 BY MR. STILLWELL:

3 Q Good afternoon, Mr. O'Connor.

4 A Good afternoon.

5 Q Did you perform an appraisal review for the
6 Helios building?

7 A Yes, I did.

8 Q And do you have the document that's been
9 marked as Exhibit 91 in front of you, the appraisal
10 review of the Helios apartments?

11 A I do, but the copy I have calls it Exhibit 6.

12 Q Yes. I'm sorry. That's in reference to -- it
13 was Exhibit 6 to the original appeal where this was
14 first documented.

15 A Okay.

16 Q But, yes, that's the correct document.

17 Is this the appraisal review that you prepared
18 for this hearing?

19 A Yes, it is.

20 Q What information did you rely on in drafting
21 this appraisal review?

22 Mostly, it was the rent roll and operating
23 history of the Helios apartments itself that I got
24 from Equity Residential. That's what allowed me to do
25 my analysis.

1 Q And could you please describe the Helios?

2 A It's a high-rise apartment tower built in
3 2015, 398 apartment units. It's got three retail
4 storefronts, very good building. Average unit size is
5 a little on the larger size. It's about 836 square
6 feet on average, which is considered on the higher
7 side, which, of course, the importance of that is when
8 units get bigger, it affects their rent per foot and
9 affects their gross rent. And it affects their
10 expenses too.

11 Q Did you identify any pre-LID valuation issues
12 in the City's appraisal?

13 A Yes, yes. At the time that I did my analysis,
14 I didn't have his -- the confidential Excel numbers
15 that we have subsequently received, so I was able just
16 to look at his value, not how he got there at that
17 time, and then, of course, when I had the rent rolls
18 and the expenses to compare it to.

19 So long story short of that is I concluded
20 that they -- they overvalued the apartment building by
21 over \$59 million.

22 Q And what is the impact of overinflated before
23 value on calculating the special benefit?

24 A Well, you -- well, the appraiser, using his
25 mass appraisal technique and his adjustment for the

1 park applies that to his value, and if you overvalue
2 the property, you're applying that percentage to a
3 higher basis and, therefore, the special benefit
4 becomes too high.

5 Q So in your professional opinion, do you feel
6 that the special benefit was too high in this case?

7 A That was my conclusion, yes, yes.

8 Q Do you have an example of a more accurate
9 before valuation method that could have been employed
10 here?

11 A Well, typically, the way it's usually done is
12 you would appraise the building in the before
13 condition and appraise the building in the after
14 condition, and then the delta between those two could
15 be the special benefit. That wasn't exactly the way
16 it was done in this case.

17 He did a before or he did a value, which came
18 in quite high, but his methodology of determining the
19 benefit was based on the park study. And then he
20 applied a factor. I think his numbers range, you
21 know, from less than half a percent up to four. But
22 in this case I think his number was about
23 1.92 percent, so he was saying applying to his value,
24 he applied 1.92 percent to calculate what the special
25 benefit was at that point.

1 And I'm just saying that's not the way it's
2 normally done, but that's what he did.

3 Q Could you briefly explain how it is normally
4 done in these situations?

5 A Yes. Like I said, there's -- usually, you
6 appraise the building in its before and its after.
7 You could say he sort of did the before, but he didn't
8 really appraise the building in the after.

9 He just applied -- he just applied this
10 factor, the park factor, rather than try and say,
11 well, here's -- in the after, he could have said I
12 think the rents are going to go up by 2.5 percent and
13 the expenses by 1.5 percent and come up with an after
14 value just the way he came up with his before value.

15 So he did a before, and then he applied this
16 park benefit factor to his before. That's -- I've
17 never seen that done before, so that was unusual.

18 Q Thank you. How does the location of the
19 Helios building impact its special benefit received,
20 specifically, its location relative to the proposed
21 LID improvements?

22 A Okay. The building is on Second Avenue and
23 Pine, which I believe would make it about three blocks
24 or so from the -- so let's say from -- well, just Pike
25 Place Market. I mean, you have to go down the hill.

1 Is that three or four blocks from the actual park?

2 Probably somewhere in there, three to four blocks.

3 And, of course, part of the plan was to
4 improve Pine Street a little bit too. So you have to
5 determine -- or it was his assignment to determine how
6 the Helios building would benefit, how much it would
7 benefit from being in that proximity to the planned
8 park improvements.

9 My opinion that it probably wouldn't have
10 much, if any, value added to the building because it
11 being three or four blocks away from the park, and the
12 way you would have to look at that would be are the
13 rents going to be any higher? Do you think the cap
14 rate would be any lower? It probably wouldn't affect
15 your expenses at all. So this, basically, would come
16 down to rents, and so many other things affect rents.

17 And since the Waterfront is being
18 substantially improved anyway, I would find it very
19 hard to determine that small level of benefit in the
20 less than 2 percent range. I don't -- I don't believe
21 it's true.

22 Q So to follow up on that, are you -- are you
23 saying that the building's value and chargeable rents
24 related thereto would increase via market forces
25 without the LID improvements necessarily?

1 A Oh, in all likelihood, yes, rents -- other
2 than times like during this coronavirus or other
3 economic periods where there's distress, other than --
4 rents usually go up at, I'd say -- when the market is
5 at an equilibrium, rents probably go up around 2.5 to
6 3 percent a year. And if the market is severely
7 undersupplied, like where it was, you know, six years
8 ago, rents were going up about 8 percent. So normal
9 you'd probably say is 3 to 5 percent rent increase,
10 just normal.

11 Q Based on your review of the special benefit
12 study, was the market increase in rent taken into
13 account when the City determined increase in value to
14 the Helios?

15 A Not that I could tell, because he didn't --
16 that's what I was referring to earlier. He didn't do
17 an after where he says, well, I think the rents are
18 going to go up by \$50 or \$100. You didn't do it that
19 way. He applied that 1.92 percent factor.

20 Q And so is it your testimony that that increase
21 didn't necessarily take into account natural increases
22 that might have happened anyway?

23 A Good point. I'd have to do some calculations
24 to be sure of that, because that's -- see, hold on a
25 second. Yeah. That's an increase in value of about

1 5.7 million. Well, I guess the best thing I could say
2 is it wasn't explicitly stated. It wasn't explained,
3 so I guess it would be hard to determine that.

4 Q In your opinion, is it industry practice to
5 explain whether or not those types of factors are
6 being used in calculating benefit?

7 A It would be a better report if it did. It
8 would have been great to see in the report that says,
9 well, the 1.92 percent that is the special benefit
10 would relate to acts and new rent per foot or rent per
11 unit. I don't remember that being in the report.

12 Q Okay. So not to dwell on this point too
13 long -- so this will be my last question on this
14 subject -- in your professional opinion, you're unable
15 to tell whether the increase in value determined by
16 the City did or did not include natural market
17 increases in rent on top of those being provided by
18 the LID improvements; is that correct?

19 A That's correct.

20 Q Thank you. For the improvements that are
21 going in, can you, please, comment on whether in your
22 professional opinion they tend to be specific benefits
23 to the Helios or general benefits to the public?

24 A Well, I concluded in my report after studying
25 this that it certainly appears that the improvements

1 on the Waterfront would more likely fall in the
2 category of a general improvement than it would a
3 specific improvement.

4 Because, usually, you get a specific
5 improvement like that, it's usually -- they're putting
6 sidewalks in, in front of your house or road
7 improvements or they're putting sewers in. It's
8 usually very clear, very, very clear that it's
9 affecting that specific property.

10 When there's a benefit that's more general and
11 so it benefits the whole city, that's the appropriate
12 place to use a general benefit. I think it's maybe
13 just went about it the wrong way. It probably should
14 have been a general benefit.

15 Q Is that conclusion informed by your earlier
16 testimony about the percentage -- the estimated
17 benefit percentage being within that margin of error?
18 Is that conclusion informed by the fact that you
19 believe these are more general benefits?

20 A Yes. You could say that. It's probably --
21 why I hesitate is because it probably isn't solely
22 because of that. When you look at what's being
23 improved even without the LID, that's a significant
24 improvement over what we had before. So rents would
25 have gone up anyway.

1 And then this more modest improvement that's
2 being called the park, again, that's why we're
3 basically here doing this is because it's very hard to
4 determine exactly how much each property benefits from
5 something like that when it certainly appears it's a
6 much more general benefit that would affect the City
7 of Seattle or even the county for that matter.

8 Q And just to clarify, what are the other
9 improvements that you talked about? You mentioned
10 before other improvements being to a large degree.
11 What are those?

12 A Well, if you -- starting from the beginning, I
13 know it's not part of this, is they took the viaduct
14 down. There's significant improvement. And they're
15 already improving Alaskan Way, and there's trees and
16 grass and pedestrian corridors and such.

17 So when you look at what the park improvements
18 are relative to what the -- let's call it what the
19 standard improvements are, it's not a leap -- it's not
20 leaps and bounds greater. It's not like, oh, we're
21 going to have a park down there that's equivalent to
22 Green Lake or equivalent to a much more substantial
23 park.

24 When -- when I looked at them and I saw the
25 graphic -- I saw the before and after, I was left

1 with, well, it's certainly a little bit better, but it
2 wasn't leaps and bounds. Plus I was concerned about
3 losing 450 parking stalls too. So there's a pro and
4 con to that.

5 Q Did you -- in addition to the loss of the 450
6 parking stalls, did you identify any other potentially
7 negative externalities of the improvements that were
8 not taken into account in the City's study?

9 A Well, I think the only thing I would probably
10 state is everybody has the general idea, at least the
11 public or the layman, that when you're near a park
12 that it's always a positive, that it's always a
13 benefit. And I would probably have to say while I
14 would agree it's usually a benefit, there are some
15 downsides about being too close to a park, and I don't
16 recall anything being mentioned about that, about any
17 problems.

18 But it's certainly -- I mean, there's -- I
19 live by a park, and there's certain noise issues and
20 stuff like that that could be a nuisance.

21 Q Are those externalities measurable from an
22 appraisal standpoint?

23 A It would be difficult. I mean, maybe in the
24 right situation you could determine that.

25 Q Final question: Did the Macaulay report

1 accurately estimate, in your view, the special benefit
2 based on the Helios' proximity to the LID
3 improvements?

4 A No, no. Looking -- remember, I said earlier I
5 think they were -- they overestimated the market
6 value, and if you take that overestimation and then
7 apply the 1.92 percent, then the special benefit was
8 overdone by over \$1.1 million. And that's if you use
9 the 1.92 percent. You could argue that's too strong,
10 and then, of course, the number would be higher.

11 MR. STILLWELL: Thank you. No further
12 questions.

13 HEARING EXAMINER VANCIL: Cross?

14 E X A M I N A T I O N

15 BY MS. THOMPSON:

16 Q This is Gabrielle Thompson on behalf of the
17 City.

18 Earlier you spoke about the documents you
19 relied on or prepared in your appraisal review when
20 you stated that you had access to the rent roll and
21 operating expenses of the Helios; is that correct?

22 A That's correct.

23 Q Do you know whether this information has been
24 provided to ABS?

25 A I don't know for certain, but I believe not.

1 Q Similarly, do you know whether it's been made
2 an exhibit in this hearing?

3 A I don't believe so.

4 Q You also testified that you believe that ABS
5 when it was calculating the special benefit it applied
6 a 1.92 percent value lift to calculate that special
7 benefit; is that right?

8 A That's correct.

9 Q So you think that Mr. Macaulay applied a
10 percentage to the before value to get to the after
11 value?

12 A Yes.

13 Q Would your opinion change if you knew that ABS
14 determined the increase in value to the property and
15 that the percentage that you're referring to is really
16 just the delta between the before and the after value?

17 A Would my opinion change? Well, we would still
18 have the -- we would still have a difference of
19 opinion on the value.

20 Q The before value?

21 A Yes, yes. So based on that, I'd probably have
22 to say no. Because we'd probably still have that
23 difference.

24 Q But would your opinion that he applied but did
25 not calculate a special benefit change if you knew

1 that he, in fact, did calculate the increase in value
2 to the property?

3 HEARING EXAMINER VANCIL: Ms. Thompson,
4 please re-ask your question. You broke up.

5 MS. THOMPSON: Sure. Sorry.

6 HEARING EXAMINER VANCIL: Not at all.
7 Just please repeat the question.

8 Q So, Mr. O'Connor, I understand that you have a
9 difference in opinion about the before value of the
10 property and that as a result of that before value
11 being off in your opinion the after value is affected;
12 is that right?

13 A Yes.

14 Q You also state in your appraisal review that
15 ABS did not calculate the special benefit but applied
16 a percentage to arrive at that number; is that right?

17 A Yes. That's what it appeared to me.

18 Q So my question is: Would your opinion that
19 the percentage is really just --

20 HEARING EXAMINER VANCIL: And you are
21 breaking up just a bit, Ms. Thompson.

22 MS. THOMPSON: Sorry. I think --

23 HEARING EXAMINER VANCIL: (Inaudible)
24 got through. We'll just make sure -- and this is true
25 for both counsel as we continue today and tomorrow.

1 Make sure you really know the question you ask. I
2 know that's challenging. Sometimes you get this great
3 question and you ask it and knowing you can ask it
4 again. Just make sure you're ready to re-ask it, and
5 we'll do the same thing. You're coming through enough
6 for us to continue. It's just that there's a bit of a
7 break-up, and we'll stick with it if you'll just
8 re-ask the question.

9 MS. THOMPSON: Sure.

10 BY MS. THOMPSON:

11 Q (Inaudible) increase in value that the LID
12 improvements would have on the property?

13 HEARING EXAMINER VANCIL: And I'm
14 sorry. Ms. Thompson, let's try this a different way.
15 You are breaking up some. Maybe just that we're in
16 the middle of the day. You can try just re-asking,
17 and I don't care how many times we have to do that to
18 get your question through. We'll do that. We can try
19 that as a method.

20 If you have maybe easier questions, please
21 feel free to use the chat, type the question. If you
22 want to do that, we can even do a practice shot at
23 that. You can -- it's a selection at the bottom of
24 your screen there. You select chat, and then down at
25 the bottom of the chat, it indicates who you're

1 selecting for the chat. Please select everyone in
2 meeting, and you can type a question that way as well.

3 And this is true for Mr. Stillwell as well if
4 we need to -- if anybody gets broken up, try to use
5 the chat, and we're monitoring that. And it could get
6 some, you know, glibs or something like that. If
7 Mr. Stillwell, for example, you have an objection to a
8 question.

9 So, Ms. Thompson, with those two tools,
10 please, at your election, please proceed with either
11 re-asking the question or type it into the -- into the
12 chat if you would like.

13 MS. THOMPSON: So another -- could I
14 try relocating? I think if I move closer to the
15 router, I might have better service.

16 HEARING EXAMINER VANCIL: If you want
17 to take -- do you want to pause for a minute so you
18 have time to do that?

19 MS. THOMPSON: Sure.

20 HEARING EXAMINER VANCIL: How much time
21 do you need for that?

22 MS. THOMPSON: Thanks.

23 HEARING EXAMINER VANCIL: How much time
24 do you need for that?

25 MS. THOMPSON: Oh, like, five minutes.

1 HEARING EXAMINER VANCIL: We'll take a
2 break for five minutes.

3 (A break was taken.)

4 HEARING EXAMINER VANCIL: Mr. Thompson,
5 please proceed with cross.

6 MS. THOMPSON: Thank you. And let me
7 know if we continue to have issues.

8 BY MS. THOMPSON:

9 Q So, Mr. O'Connor, we were talking before about
10 your conclusion that the ABS report applied a -- can
11 you hear me, Mr. O'Connor? Okay. Your conclusion
12 that ABS applied a 1.92 percent factor to arrive at
13 the special benefit. And would it change your opinion
14 if you knew that ABS did calculate the after value and
15 that the 1.92 percent is really just the delta between
16 the before value and the after values that were
17 calculated?

18 A Sorry. I just got a battery warning. All
19 right.

20 It would change my opinion in terms of
21 methodology. I would say that would have been better.
22 But when I read his initial report, it didn't appear
23 like that. He didn't present here's my rents before,
24 rents and expenses before, my rents and expenses
25 after.

1 We really couldn't tell. It looked like he
2 used the park study to determine the factor and apply
3 it. But it still gets back to the question do we
4 think there's a special benefit that's equal to nearly
5 2 percent? Probably not. So in the end, I'd have to
6 say, no, it probably doesn't change my opinion of the
7 effect -- of the accuracy of the special benefit. It
8 would change my opinion on his methodology.

9 Q And so since you bring up the special benefit,
10 did you prepare an independent special benefit
11 analysis?

12 A No.

13 Q So you didn't calculate what benefit, if any,
14 would accrue to the Helios property as a result of the
15 LID improvements?

16 A No.

17 Q And in your report you mentioned that you
18 prepared an income approach to value to arrive at a
19 before value for the Helios apartments; is that right?

20 A That's correct.

21 Q Did you prepare an appraisal report in
22 connection with that?

23 A No.

24 Q So there's no report to support your market
25 value that's listed here in the report?

1 A No. I appraised -- I prepared an appraisal
2 review. And when an appraiser does an appraisal
3 review, they are allowed to recalculate numbers and
4 test the numbers without doing a separate appraisal as
5 part of the review process.

6 Q You also testified earlier that you believe
7 that ABS did not omit the increased rents that would
8 result from market forces from its special benefit
9 calculation; is that right?

10 A I'm not sure I followed. Did not omit?

11 Q So you said that earlier that you believed
12 that the special benefit calculation prepared by ABS
13 includes or you believe it includes the increases in
14 rent that would occur regardless of the LID
15 improvements; is that right?

16 A That's what it appeared to after reading his
17 report.

18 Q So would it change your opinion if you learned
19 that ABS did remove market increases in its special
20 benefit analysis?

21 A No, probably not.

22 Q It wouldn't change your opinions about the
23 quality of the study?

24 A Not the quality of the study perhaps, but I
25 thought you were getting at the actual estimate of

1 value for the special benefit. I probably wouldn't
2 change my mind on that.

3 Q No. Sure. And I understand that. Because in
4 your opinion the before value is overstated. So any
5 special value that's calculated from that, that
6 figure, in your opinion, would be too high. But my
7 question relates to methodology. And you're saying
8 that it was an error for ABS to not omit market
9 increases from the special benefit analysis. And I'm
10 asking if they did actually do that, would your
11 opinion change about the methodology?

12 A In regard to that, it would, if they did that.
13 I don't remember reading anything in there that told
14 me that. I don't know how I was going to know that,
15 that that was the case.

16 Q So your -- you stated earlier that the special
17 benefit that's been assessed for the Helios property
18 is not accurate. And is that conclusion only because
19 the before value, in your opinion, is overstated?

20 A No.

21 Q What else contributes to your conclusion that
22 the special benefit is inaccurate?

23 A I don't believe there can be that big of a
24 special benefit for the marginal improvement to the
25 Alaskan Way Waterfront.

1 Q But you haven't calculated the special
2 benefit, whether it exists or not, in this case; is
3 that right?

4 A That's correct.

5 MS. THOMPSON: No further questions.

6 HEARING EXAMINER VANCIL: Redirect?

7 MR. STILLWELL: I was on mute.

8 E X A M I N A T I O N

9 BY MR. STILLWELL:

10 Q Following up on that last question, in your
11 professional opinion, is it difficult to be able to
12 calculate and put a number on the special benefit when
13 the improvements are, as you testified earlier,
14 relatively minuscule?

15 A Oh, yes, very much so. That's -- that is
16 probably one of the main -- the main issues. We're
17 getting down to, you know, a percent or 2 improvement.
18 And I don't know how an appraiser would really even be
19 able to be that accurate. So I don't believe it.

20 MR. STILLWELL: Thank you. Nothing
21 further.

22 HEARING EXAMINER VANCIL: Thank you,
23 Mr. O'Connor.

24 MR. O'CONNOR: Thank you.

25 MR. STILLWELL: Objectors -- thank you,

1 Mr. O'Connor. I appreciate it.

2 MR. O'CONNOR: Thank you. I got to
3 figure out -- here we go.

4 MR. STILLWELL: The objectors would
5 next like to call Anthony Gibbons back on behalf of
6 all of the matters that -- where objectors are
7 representing properties in this hearing. Mr. Gibbons,
8 I believe, is on the line.

9 MR. GIBBONS: Yes. I'm here.

10 MR. STILLWELL: And before we get
11 going, during the break, I e-mailed examiner's office
12 an additional exhibit that I believe has been
13 circulated that Mr. Gibbons is going to speak to. And
14 so now there should be two exhibits, 92 and 93, I
15 believe, they should be marked regarding COVID.

16 HEARING EXAMINER VANCIL: Yes. Just a
17 moment. Let's make sure I can open them if you're
18 going to refer to them.

19 MR. STILLWELL: Yes.

20 HEARING EXAMINER VANCIL: Okay. We can
21 proceed. I've got the exhibits. Anything else before
22 we get started?

23 MR. STILLWELL: No. Just if the
24 examiner would like to swear in Mr. Gibbons again --
25 he's testified.

1 HEARING EXAMINER VANCIL: Mr. Gibbons,
2 you remain under oath from your earlier appearance.

3 MR. GIBBONS: Understood.

4 E X A M I N A T I O N

5 BY MR. STILLWELL:

6 Q Good morning, Mr. Gibbons -- or good
7 afternoon, rather.

8 A Good afternoon.

9 Q Is the date of value important for an
10 assignment?

11 A Yeah. It's, obviously, a critical aspect of
12 an appraisal assignment, one of the sort of four
13 pillars of what you need to have in order to appraise
14 a property. It's covered under the requirement in
15 Uniform Standards for Professional Appraisal Practice.
16 It's covered under standard 1-2(d), and I have an
17 exhibit from page 126 of USPAP illustrating the flow
18 chart of a typical appraisal process and how this is
19 Item 4 in the process after, basically, identifying
20 the client, the type of value, and, obviously, the
21 property interest and property that's to be appraised.

22 Q And is that flow chart you're referencing in
23 the USPAP, is that the document labeled Exhibit 92
24 that we have before us?

25 A Yeah. I don't know how to view Exhibit 92.

1 Is that --

2 Q Right. Sorry. Just for sake of consistency,
3 is it the document titled page 126 from the --

4 A Yes.

5 Q -- 2018/2019 USPAP?

6 A Yes, that's correct.

7 Q What is the typical shelf life for an
8 appraisal?

9 HEARING EXAMINER VANCIL: I'm sorry to
10 interrupt you, Mr. Thompson.

11 Mr. Gibbons, you indicated that this is step 4
12 on that?

13 MR. GIBBONS: Yes. It's the fourth box
14 on the left-hand side of the chart in a flow chart
15 sequence.

16 HEARING EXAMINER VANCIL: So that's --
17 I see a box labeled effective date 1-2(d)?

18 MR. GIBBONS: That's correct, yeah.

19 HEARING EXAMINER VANCIL: So it's not
20 labeled step 4, but it's labeled that fourth box?

21 MR. GIBBONS: You're correct.

22 HEARING EXAMINER VANCIL: All right. I
23 just wanted to make sure I was following the
24 testimony.

25 Sorry, Mr. Stillwell, please proceed.

1 BY MR. STILLWELL:

2 Q Thank you. Mr. Gibbons, you were answering
3 the question what the typical shelf life is for an
4 appraisal?

5 A Yes. I mean, this, obviously, depends. There
6 are sort of rules of thumb that appraisers have
7 developed usually based on questions that come from
8 clients as to, you know, how good is this. I think my
9 typical response is six months. As sort of a more
10 rigid standard, the Washington State RCO, Recreation
11 Commission Office, related to the funding of open
12 space acquisitions, for example, has a year
13 requirement, which they actually allow an agency to
14 get an appraisal, negotiate a price, and close on the
15 property with that appraisal in a year.

16 It's, of course, only true if the basic
17 premise of the appraisal in terms of the forecasts and
18 commentary about where the economy is going end up
19 being accurate. Then even though these -- there are
20 subsequent events, if they tend to confirm the
21 accuracy of the appraiser's observations at that time,
22 that, obviously, keeps the appraisal fresh, so to
23 speak.

24 Q So what are some examples of things that might
25 change or reduce that timeline?

1 A Well, it's really anything that -- and I want
2 to call it an unforeseen event. I'll clarify that in
3 a little bit, not maybe unforeseen, but unexpected
4 perhaps in its timing or in the depth of the impact.
5 You know, an obvious one for a house might be a house
6 gets -- has flood damage or gets -- or burns --
7 there's a fire and has significant damage, that would
8 be an event that somebody might say, well, I sort of
9 knew that would happen, but we didn't know it was
10 going to happen tomorrow or that is always a
11 possibility, but it wasn't assumed to happen in the
12 kind of time frame we're talking about.

13 And probably even more -- obviously, this
14 current pandemic is one thing that nobody anticipated
15 the severity of the economic fallout from this, and
16 terrorism act would be the same kind of thing where
17 perhaps not only -- you know, not expected, but also
18 not foreseen.

19 Q And has the Appraisal Institute given
20 appraisers guidance in the context of COVID-19?

21 A Yes. You know, this is a -- this is,
22 obviously, something appraisers have to deal with
23 immediately, and so the Appraisal Institute has come
24 out with a -- some guide notes for appraisals.
25 Nothing particularly surprising, but I printed off

1 what their advice is presently to appraisers in
2 dealing with this crisis.

3 And I don't know if that's an exhibit that's
4 being marked or --

5 Q Yes. Is that document titled Appraisal
6 Institute Coronavirus (COVID-19)?

7 A Yes, that's correct.

8 HEARING EXAMINER VANCIL: Do you want
9 to mark that Exhibit 94?

10 MR. STILLWELL: Yes, please. Thank
11 you.

12 BY MR. STILLWELL:

13 Q And so this document is the guidance you were
14 referring to?

15 A Yeah. And probably where I would like to
16 point everybody's attention I think it's the -- excuse
17 me. I think it's the fourth bullet point. Let me
18 have a quick look here. Yeah, the fourth bullet
19 point, if I can read it just so there's no
20 misunderstanding: Appraisal reports should include a
21 discussion of market conditions and so mention the
22 coronavirus outbreak and its possible impact.

23 That's what they're telling appraisers. And I
24 think this is very important: However, it is not
25 appropriate to include a disclaimer or extraordinary

1 assumption that suggests the appraiser is not taking
2 responsibility for the analysis of market conditions.

3 So really what this note is saying from the
4 Appraisal Institute is you can't say something like,
5 you know -- and this is for an action that is ongoing
6 where the appraisal is going to be used, you know,
7 like, for if it was a condemnation and the date of
8 value is the date of trial or in this case for an LID,
9 the date of the council decision.

10 This is not something that an appraiser can
11 just step back from and say, you know, this isn't my
12 issue. I've done my report, rather this is something
13 an appraiser can't just make an assumption and make
14 this go away. This is something that has to be dealt
15 with.

16 Q And, to your knowledge, is Mr. Macaulay a
17 member of the Appraisal Institute?

18 A He is, yes.

19 Q And so does that mean he would also be not
20 necessarily bound but it would be advised that he
21 follow these guidelines?

22 A Yeah. I would expect the City, as his client,
23 to reach out to him and say, you know, hey, we need
24 to -- your report is out of date, basically.

25 Q Can you please elaborate on the Appraisal

1 Institute's guidance, specifically in Bullet Point 4,
2 that appraisers incorporate COVID-19 into their
3 appraisals?

4 A Well, probably the most significant thing
5 we're seeing is, obviously, the subject matter of this
6 report -- and to remind ourselves -- is the -- whether
7 or not the introduction of a park designed to attract
8 out-of-town visitors and tourists into downtown
9 Seattle would create a special benefit for a huge
10 block of downtown real estate.

11 That real estate includes hotels. It includes
12 office buildings and apartments and condominiums.
13 And, literally, just in recalling some of the methods
14 used by Mr. Macaulay, things like increasing the --
15 for a hotel, just assigning a slightly higher
16 percentage of occupancy for this as a supposed special
17 benefit, well, we've seen occupancy now change from
18 about 75 percent to about 6 percent, you know.

19 And it's not -- I'll get back a little bit to
20 the type of the problem which kind of speaks a little
21 bit to the virus, but this is -- this is an issue
22 which I actually talked about in my testimony. I kind
23 of looked it up. It was page 88, line 15 of my first
24 testimony with Darby DuComb where I talked about the
25 market. You know, the market response to changes in

1 condition is extraordinary.

2 And I think in that example on that page I
3 mention 10 to 20 percent. Well, now we're seeing
4 impacts far greater than that, and the point I want to
5 make is that a recession is not an "if." It's a
6 "when." And, certainly, when I was testifying back in
7 February, I hadn't got the "when" down, but I knew it
8 was coming.

9 And I know these market forces -- I've seen
10 them before -- they would and have already completely
11 overwhelmed this 2 to 3 percent assignment made to
12 these properties. So, I think, again, it's an
13 illustration of the market does not behave in the
14 manner suggested by Mr. Macaulay in that report that
15 is the response of this minuscule sort of 2 or
16 3 percent to this linear event down on the waterfront.
17 It doesn't happen.

18 There's no evidence of it in the appraisal,
19 and now we have in front of us a current example of
20 the way the real estate responds to a market condition
21 in an extremely -- you know, an extremely -- I was
22 going to say violent. That's not quite the right --
23 in an extreme way where you see suddenly that we have
24 this impact.

25 And, of course, it is perhaps the irony of it

1 in this particular case is, of course, that we're all
2 being asked to stay away from parks, and there may be
3 a paradigm shift in certain aspects of group
4 activities. There may be an increase in
5 telecommuting. There may be a whole bunch of
6 increases which sort of tend to create less
7 congregation of dense bodies in one place.

8 But it's, obviously, before there was
9 absolutely no evidence of people paying more -- as a
10 special benefit, people paying more by a 2 or
11 3 percent margin because of this linear project a
12 block or several blocks away. And now we have a
13 situation where you would literally have to ask
14 yourself, you know, somebody buying a condo today is
15 really going to think about this park as a value
16 influence when we've got a market condition that is,
17 obviously, very severe.

18 So, again, it's really something, again, just
19 to illustrate how the market works, and it doesn't
20 work the way that Mr. Macaulay has presented in his
21 report.

22 Q Can you please comment on whether the fact
23 that coronavirus could be classified as perhaps a
24 one-time anomaly in the market come and gone versus
25 ongoing concerns regarding market fluctuations? Does

1 that change your analysis of the speculative nature of
2 the appraisal?

3 A These are all questions that an appraiser
4 would have to consider. You know, there's, obviously,
5 a desire to sort of have a steep V here and get back
6 to normal the way we'd normally done things.
7 Unfortunately, if this -- if we get through this
8 current, immediate issue, it won't be because people
9 necessarily will be immune or we have a vaccine. It
10 will be a temporary restraint until the seasonality of
11 it strikes up again, and that will probably continue
12 until we actually have a vaccine.

13 But -- and so I think, you know, there are
14 several effects today. And, again, this appraisal of
15 the -- which would be as of a decision today, has to
16 recognize that hotels now are averaging 6 percent,
17 not, you know -- not 75. So -- and there's a
18 short-term loss, and then a mid-term recovery period,
19 and then there's potentially a structural change in
20 the way things now work.

21 And that may be more telecommuting. There may
22 be less desirability to be in a crowd-like place, you
23 know. So I think only time will tell. I don't really
24 dare predict. None of them speak to any kind of -- I
25 guess the way I'd think about it is I --

1 Mr. Macaulay's report didn't have sufficient evidence
2 to support his opinion. Now we have a situation which
3 suggests there'll be further countervailing influences
4 that support that from the marketplace.

5 So that's really all we can say at this
6 moment, but these are issues that he has taken into
7 account.

8 Q Thank you. And one final question sort of to
9 button up what you just said.

10 Does institutions like the Appraisal Institute
11 provide the guidance and mechanisms for professional
12 appraisers to conduct USPAP-compliant appraisals in
13 light of COVID?

14 A Yeah. There are lots of things now coming
15 out. There are market surveys helping people -- some
16 of this is from the private industry, and by that I
17 would include the Appraisal Institute. But as sort of
18 a nonprofit organization, a lot of appraisers are
19 looking to the organization, not so much for answers,
20 but for guidance in how to finance this. Where do we
21 go? What's the acceptable standard? Obviously, it's
22 an extraordinary condition.

23 But, again, it's not so extraordinary that it
24 wasn't anticipated that it would be something, whether
25 it's another financial crisis. We went through this

1 in 2008, 2009. I call it the sort of Wile E. Coyote
2 period when he's running out over the cliff and
3 there's no cliff beneath him. And there's a period of
4 suspended disbelief -- suspended belief and then a
5 realization of how far things could go down. And some
6 people tend to overshoot it, and some people tend to
7 underestimate the impact.

8 But this is all going to go on now for the
9 next two or three months. And everybody will be
10 trying to gravitate back to the old normal, but
11 chances are we will have a new normal. We'll have a
12 new way of looking at things. But I think it just
13 speaks to the absurdity of trying to -- I mean, the
14 absolute absurdity of trying to come up with a 2 or
15 3 percent change in market value, you know. When you
16 have recessions, market forces, changes in occupancy
17 that can happen so quickly, and we're going to have a
18 little bit of a rolling market now for a while.

19 MR. STILLWELL: Thank you. I have no
20 further questions.

21 HEARING EXAMINER VANCIL: Cross?

22 E X A M I N A T I O N

23 BY MS. THOMPSON:

24 Q Good afternoon, Mr. Gibbons.

25 A Hello.

1 Q This is Gabrielle Thompson on behalf of the
2 City.

3 A Sure.

4 Q So you mentioned earlier about the shelf life
5 of appraisals and that it seems like it's somewhat of
6 a rule of thumb situation with the exception of you
7 mentioned the RCO guidance which provides for one
8 year; is that right?

9 A Well, the rule of thumb is my rule of thumb on
10 the six-month issue. The RCO allows a year for
11 open-space work as a general rule. Again, based on
12 the presumption that the appraiser said something like
13 the economy is on a gradual upward trend or it's
14 stable and we see now major changes, etc., and under
15 the presumption that that remains a true statement,
16 then it sits on the shelf, and there's no need to
17 change it. There's no need to go back to the
18 appraiser unless there's a specific issue, and it
19 continues forward.

20 In the case of a trial or a legal proceeding,
21 then there's an automatic continued update of that
22 work, you know, up to until testifying in trial. Then
23 it would be the date of value that you're testifying
24 to that day.

25 Q And you also said that the timeline for the

1 shelf life of an appraisal can be affected by
2 unforeseen events like a flood or a fire; correct?

3 A That's correct.

4 Q In your opinion, is an unexpected event like a
5 fire that destroys a house different from an
6 unexpected market condition which affected the market
7 but doesn't actually destroy improvements to the
8 property?

9 A Well, the one is nothing to do with the
10 market. The other is only to do with the market. But
11 the connecting -- the connection there is does it
12 affect the market value of the property, and yes. And
13 so whatever the cause, if it's in and of itself within
14 the property, you know, construction defect or it's
15 outside in the market, it's -- I'm not saying it's the
16 same thing, but the impact on the market value is
17 something that needs to be dealt with by the
18 appraiser.

19 Q And we looked at the Appraisal Institute
20 guidance that was issued on COVID-19, and do you
21 believe that these recommendations are made to
22 appraisers who are currently undergoing the appraisal
23 process versus appraisers who have prepared reports in
24 the past before COVID was an issue?

25 A Well, like I said, if you have a -- I'll give

1 you a very nice, clear example. If you're working on
2 a condemnation assignment and you have a possession
3 and use date, which is the legal date of value when
4 the government actually took the property, and it
5 turns out it's December 15, then there's no impact.

6 But if you are doing an appraisal for a trial
7 in condemnation and the property owner hasn't given
8 possession and use of the property, then, yes, you
9 have to consider it. So if the date of value is
10 booked for the particular matter and is fastest in
11 terms of, you know, the legal date of value, then
12 something you don't need to worry about. And the
13 standards don't -- the standard really relates to what
14 you should do in the interim if it's a moving date.

15 Q So in this case if the date of value is the
16 date of the appraisal, which is October 1, 2019, then
17 these guidelines wouldn't apply to that appraisal; is
18 that right?

19 A Yeah. If that was the legal date of value,
20 then they would not.

21 MS. THOMPSON: No further questions.

22 HEARING EXAMINER VANCIL: And redirect
23 for Mr. Stillwell?

24

25

1 EXAMINATION

2 BY MR. STILLWELL:

3 Q Yes, just one following up on that final
4 question.

5 In this matter, what is the date of value when
6 you're determining value for the purposes of a LID
7 assessment?

8 A Well, since the -- since the appraiser does
9 his work -- and, actually, in this particular case,
10 it's more -- it's complicated by the fact that he's
11 used a hypothetical condition which is not accurate.

12 MS. THOMPSON: Objection. Apologies
13 for the late objection. Calls for a legal conclusion.

14 HEARING EXAMINER VANCIL: Response,
15 Mr. Stillwell? This is the objection question?

16 MR. STILLWELL: Withdrawn.

17 HEARING EXAMINER VANCIL: Thank you.
18 Proceed, please.

19 MR. STILLWELL: I have no redirect.

20 HEARING EXAMINER VANCIL: Thank you
21 very much, Mr. Gibbons.

22 MR. GIBBONS: Thank you. Okay.
23 Good-bye. It might take me a little while to sign
24 out, so I'm sorry.

25 HEARING EXAMINER VANCIL: (Inaudible)

1 video, and you can take your time from there.

2 Mr. Edlund-Cho, if you'll drop him for video
3 and audio.

4 All right, then. Mr. Stillwell, last I
5 checked, we had a couple of witnesses to go through
6 today. It seems we may have done that. And we have
7 one more tomorrow. Is there anything else today that
8 we're able to cover in the hearing?

9 MR. STILLWELL: No. That was all we
10 had planned for today.

11 HEARING EXAMINER VANCIL: Okay. It's
12 my understanding that then we're reconvening on
13 Thursday, April 16. At that time the hearing examiner
14 will consider the motion submitted by objectors and
15 the response submitted by the City, and there will be
16 opportunity for one witness to be presenting.

17 And what time is the witness scheduled to be
18 available? Mr. Stillwell?

19 MR. STILLWELL: I'm sorry. I thought
20 you were meaning the City's witness. For Thursday?

21 HEARING EXAMINER VANCIL: Yes.

22 MR. STILLWELL: 9:00 a.m.

23 HEARING EXAMINER VANCIL: Okay. Yeah.
24 That's what time we're up. I don't think, even if I
25 give oral argument, it will be long on the motion, so

1 we should be wrapped up by 9:30 or so. But if they're
2 ready to go at 9:00, that won't be a problem.

3 MR. STILLWELL: Yeah, the plan is to
4 have everyone ready at 9:00.

5 HEARING EXAMINER VANCIL: Okay. Are
6 there any procedural -- let's see. How are we doing
7 on exhibits? I know we had some come in up to --

8 MR. EDLUND-CHO: Excuse me, Examiner
9 Vancil, Mr. Stillwell, I'm terribly sorry to
10 interrupt, but according to an e-mail that I received
11 from Ms. Lin yesterday evening at 8:09 p.m.,
12 Dr. Crompton will begin his testimony -- or will be
13 available to provide his testimony at 10:00 a.m.

14 HEARING EXAMINER VANCIL: I thought I
15 had seen a 10:00 a.m. time. If it is possible,
16 Mr. Stillwell, to have him earlier, that would be --
17 that would do well. We don't have much to do in the
18 morning, and the hearing is scheduled to start at
19 9:00.

20 MR. STILLWELL: That's fine. And I
21 apologize. I see that e-mail now saying 10:00 as
22 well.

23 HEARING EXAMINER VANCIL: We'll weigh
24 through the motion. We'll take a break. We'll come
25 back at 10:00. That's fine. But I would rather if we

1 could just do it all at once, that's a more efficient
2 use of our time.

3 MR. STILLWELL: Understood. Yeah,
4 we'll make sure he's available at 9:00 depending on
5 what happens at the beginning.

6 HEARING EXAMINER VANCIL: All right.

7 MR. STILLWELL: With regard to the
8 exhibits, I did -- yesterday there was comments about
9 two of the exhibits needing updating essentially in
10 final form. I've provided those yesterday. I believe
11 they've been circulated.

12 HEARING EXAMINER VANCIL: On those
13 everything up to -- Mr. Edlund-Cho, what are we
14 admitted up through? What's the last exhibit that was
15 admitted, Mr. Edlund Cho?

16 MR. EDLUND-CHO: Sorry. I last heard a
17 marking of Exhibit 94, but according to my notes,
18 Exhibit 90 was the last exhibit to be admitted.

19 HEARING EXAMINER VANCIL: Okay. So we
20 need 91, 92, and 93 and 94. Are you seeking to have
21 those admitted, Mr. Stillwell?

22 MR. STILLWELL: Yes, please.

23 HEARING EXAMINER VANCIL: Is there any
24 objection to 91, 92, 93, or 94?

25 MS. THOMPSON: No objection.

1 HEARING EXAMINER VANCIL: All right.
2 Ninety-one through ninety-four are admitted.

3 (Exhibit 91, Exhibit 92, Exhibit 93,
4 and Exhibit 94 were admitted.)

5 HEARING EXAMINER VANCIL: Are there any
6 other procedural items we need to address before we
7 adjourn for the day?

8 MR. STILLWELL: None from objectors.

9 MS. THOMPSON: None from the City.

10 HEARING EXAMINER VANCIL: Okay. With
11 regard to the hearing today, I noted that we had a
12 little bit of lack of connectivity through -- from
13 Ms. Thompson which was corrected by going closer to
14 her router. And, of course, we lost Mr. Stillwell,
15 and he stepped in for -- he was covered by Ms. Lin.
16 Were there any other complications, concerns, issues
17 that need to be raised now?

18 MR. STILLWELL: None from me.

19 MS. THOMPSON: None from the City.

20 HEARING EXAMINER VANCIL: All right.
21 Thank you very much. I will look forward to seeing
22 you all on Thursday. We're adjourned.

23 (The proceedings concluded.)

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STATE OF WASHINGTON
COUNTY OF KING

I, Nancy M. Kottenstette, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings on April 14, 2020, is true and accurate to the best of my knowledge, skill, and ability.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of April, 2020.

Nancy M. Kottenstette
Nancy M. Kottenstette, RPR, CC 22

