BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In re Proposed Final Assessment Roll for Local Improvement District No. 6751 ("Waterfront LID") Parcel Nos.: 6094670010; 6094670020; 6094670030; 6094680050; 0660000740; 0660000708; 2285130010; 6792120010; 6195000030; 0942000430; 6792120020; 7683890010; 1976200070; 1976200075; 1976200076; 7666202465; 7666202345; 1975700365; 0696000015; 1974700175; 1117080020; 1975700235; 0696000055; 0660000540 0660000545; 066000-0575; 2538831460; 2538831480; 0939000240; 1974600025; 1974600035	Case Nos. CWF-0318, 0410, 0411, 0412, 0413, 0414, 0415, 0416, 0417, 0418, 0420, 0421, 0422, 0423, 0425, 0426, 0427, 0429, 0430, 0431, 0432, 0433, 0434, 0435, 0436, 0437, 0438, 0439, 0440, 0441 **DECLARATION OF R. GERARD LUTZ**

I, R. Gerard Lutz, declare as follows:

1. I have personal knowledge of the facts stated below and am competent testify regarding the same.

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2. Attached as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the March 3, 2020 Seattle Waterfront LID Assessment Hearing before Hearing Examiner Ryan Vancil.

3. Attached as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the March 5, 2020 Seattle Waterfront LID Assessment Hearing before Hearing Examiner Ryan Vancil.

4. Attached as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the March 11, 2020 Seattle Waterfront LID Assessment Hearing before Hearing Examiner Ryan Vancil.

5. Attached as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the March 12, 2020 Seattle Waterfront LID Assessment Hearing before Hearing Examiner Ryan Vancil.

6. Attached as **Exhibit 5** is a true and correct copy of excerpts from the deposition of Robert J. Macauley, dated February 27, 2020.

7. Attached as **Exhibit 6** is a true and correct copy of Dr. John Crompton's review of ABS Valuation's Final Special Benefit Study.

8. Attached as **Exhibit 7** is a true and correct copy of excerpts from the Local and Road Improvement Districts Manual for Washington State, 6th Ed. (Oct. 2009).

9. Attached as **Exhibit 8** is a true and correct copy of Anthony Gibbons' January 30, 2020 Letter re the Waterfront Seattle LID Special Benefits Report.

10. Attached as **Exhibit 9** is a true and correct copy of a table comparing John Gordon's valuation of the Hyatt Regency with ABS Valuation's analysis for this hotel.

11. Attached as **Exhibit 10** is a true and correct copy of a table comparing John Gordon's valuation of the Hyatt at Olive 8 with ABS Valuation's analysis for this hotel.

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12. Attached as **Exhibit 11** is a true and correct copy of Benjamin Scott's supplemental report for the Helios property (CWF-0441), dated March 13, 2020.

13. Attached as **Exhibit 12** is a true and correct copy of Benjamin Scott's supplemental report for the 2+U property (CWF-0421), dated March 13, 2020.

14. Attached as **Exhibit 13** is a true and correct copy of Interrogatory Response 40 from Defendant's Objections and Responses to Plaintiffs' Third Set of Interrogatories and Requests for Production in King County Superior Court Case No. 19-2-05733-5 SEA, dated January 17, 2020.

15. Attached as **Exhibit 14** is a true and correct copy of Interrogatory Response 50 from Defendant's Objections and Responses to Plaintiffs' Third Set of Interrogatories and Requests for Production in King County Superior Court Case No. 19-2-05733-5 SEA, dated January 17, 2020.

16. Attached as **Exhibit 15** is a true and correct copy of an email dated March 10, 2020 RE: HPA Application Received for City of Seattle Waterfront Park and Pier 63.

17. Attached as **Exhibit 16** is a true and correct copy of depictions comparing current, Before-LID and After-LID conditions, provided by the City of Seattle.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, on April 16, 2020.

R. Gerard Lutz

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Exhibit 1

Seattle Waterfront LID Assessment Hearing

Seattle LID Public Comment Hearing

March 3, 2020

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8 SEATTLE WATERFRONT LID ASSESSMENT HEARING
9 BEFORE
10 HEARING EXAMINER RYAN VANCIL
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14 Taken at 700 Fifth Avenue
15 Seattle, Washington
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24 DATE TAKEN: MARCH 3, 2020
25 REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

1 A P P E A R A N C E S

2

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1 I N D E X

2 MARCH 3, 2020

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1 A. Do you want to take that?
2 **Q. Yes.**
3 A. Okay.
4 **Q. All right. I'm going to leave you this one.**
5 A. Okay.
6 MR. LUTZ: We'd like to introduce as
7 Exhibit 5, the document identified as Exhibit 3 in our
8 exhibit list, which is -- and can I have a copy of that
9 for --
10 HEARING EXAMINER VANCIL: Marked as
11 Exhibit 5.
12 BY MR. LUTZ:
13 **Q. Now, can you describe what the special benefit**
14 **issue was in that case?**
15 A. Yeah. I -- a couple of things I'd like to pull
16 up about it, because I think there -- there is a fallacy
17 in the Macaulay study related to the timing of special
18 benefit. And if you look at -- and this was an issue
19 that Sound Transit has appraisers put forth in this
20 trial, that they -- they were meant to assess special
21 benefit as of the date of value, which was the date they
22 were doing the assignment, as though the station were
23 complete.
24 And we disputed that. That is not -- that is
25 not the law. Actually Judge Downing cross-examined the

1 witness when he indicated that. It's not the law.
2 And you'll notice in his decision, which is item
3 number 11, he said -- it's the -- I believe it's the --
4 it's the fourth paragraph, starting, "the minimal."
5 It's about a little less than halfway down.
6 **Q. The fourth sentence in paragraph 11 on page 5?**
7 A. Five, yeah. "The minimal amount of impact of
8 the station is primarily due to the nature of the tenant
9 profile of the business park, but also due to it being
10 nearly a decade away. If there is to be an economic
11 boost felt from the arrival of light rail, such a
12 benefit is too remote and speculative today to be deemed
13 a factor in establishing the property's current value."
14 And the point I'd like to make is that,
15 oftentimes in LID studies, there is a shortcut that is
16 undertaken by an appraiser establishing before and after
17 as of a particular date, the same date. And usually
18 that's considered a reasonable approximation when the
19 project is like a six-month project or even a year
20 project.
21 But in the case of a special benefit to be
22 delivered four or five years later, that -- that
23 approximation clearly becomes an erroneous one in terms
24 when the receipt of the special benefit is. It's not
25 there at that time; it should not be assessed at that

1 time.
2 An appraiser is perfectly capable of looking
3 forward to a future event. We do full costs all the
4 time and determining what discount should be made. And
5 the literature speaks to that in my letter.
6 **Q. If we're going to go to your letter, why don't**
7 **we introduce that.**
8 A. Okay.
9 **Q. Before -- just before we move on to it.**
10 A. Yeah.
11 **Q. That would be your January 30, 2020, letter to**
12 **me?**
13 A. Yes.
14 **Q. And we'd like to introduce that as Exhibit 6.**
15 **HEARING EXAMINER VANCIL: So marked.**
16 BY MR. LUTZ:
17 **Q. Please proceed.**
18 **HEARING EXAMINER VANCIL: Mr. Lutz, could I**
19 **ask you a favor? Could you hand it to the City over the**
20 **table?**
21 MR. LUTZ: Oh, absolutely.
22 HEARING EXAMINER VANCIL: So we don't whack
23 the --
24 MR. LUTZ: Yeah, no kidding. Thank you very
25 much.

1 (Off-record discussion)
2 HEARING EXAMINER VANCIL: I would love to
3 get out of my seat for a regular basis. It would be
4 helpful if you just hand it to the a --
5 MR. LUTZ: Absolutely.
6 THE WITNESS: Well, it's on -- on page 3 of
7 my letter, the fourth paragraph there, this is a quote
8 from Jim Eaton. Jim Eaton is -- was Department of
9 Justice appraiser that wrote several texts on appraisal
10 theory. And he notes there, "The fair market value of
11 the" --
12 BY MR. LUTZ:
13 **Q. Where are we here? Before you start.**
14 A. It's the -- sorry, the fourth paragraph of
15 page 3.
16 **Q. Thank you.**
17 A. "The fair market value of the remainder as of
18 the date of valuation" -- which in this case would be
19 October 19th -- "shall reflect the time when the damage
20 or benefit caused by the proposed improvement or project
21 will actually be realized."
22 And that is, you know, a pure recognition of
23 factual reality of when something is received. And
24 appraisers are completely capable of discounting a
25 future benefit if it's not going to be received

1 immediately.
2 **Q. And Mr. Macaulay, in his deposition, described**
3 **the assumption that the benefits were already accrued as**
4 **of October 1, 2019, as a hypothetical condition.**
5 A. Yeah.
6 **Q. Can you talk a little bit about the appraisal**
7 **ideas of an extraordinary assumption and a hypothetical**
8 **condition?**
9 A. Yeah. I don't believe this is an appropriate
10 time for a hypothetical condition.
11 A hypothetical condition is something that's
12 actually not true. It's assumed for purposes of
13 analysis, not for -- and -- and to maybe test an
14 assumption. Like a client might say to you, what might
15 my property be worth if it was rezoned to this? And you
16 would say, okay, as a hypothetical -- it's not rezoned,
17 but as a hypothetical, he has to test that assumption.
18 But in relation to the receipt of a public
19 improvement, where the intention is to fairly assess a
20 property for the benefit received, if the hypothetical
21 elevates the special benefit received, then it's clearly
22 an error.
23 You know, the -- you should be assessed what the
24 special benefit is when the -- when you actually receive
25 it, not based on a hypothetical condition that is not

1 A. Okay.
2 MR. LUTZ: I'll hand it across the table.
3 MR. FILIPINI: That works.
4 MR. LUTZ: Do you want one too?
5 And here's a second.
6 HEARING EXAMINER VANCIL: We just need one.
7 MR. LUTZ: No, two pictures. And if they
8 can be labeled, like, Exhibit --
9 HEARING EXAMINER VANCIL: This will be
10 Exhibit 6.
11 MR. LUTZ: If it can be one exhibit, that's
12 great.
13 HEARING EXAMINER VANCIL: Exhibit 6 or 7?
14 MR. LUTZ: Seven.
15 And I'll hand you, Anthony -- and no, I'm
16 not going to bang your head -- the pictures.
17 BY MR. LUTZ:
18 **Q. You started to talk about pictures. I've**
19 **introduced Exhibit 7.**
20 **Can you describe what these two pictures are?**
21 A. Yeah, so these two pictures are of the central
22 waterfront area of both looking -- looking north, you
23 can -- you can north identify with the -- the wheel
24 there in the left-hand side of the picture. And in the
25 south, you can see the -- the stadium -- the stadium

1 roof just in the background.
2 So -- and they're taken from the commuter
3 overpass, coming out from the ferry.
4 And so, if you were assessing a special benefit
5 resulting from the improvement or beautification or, you
6 know, improvement of streets to this area, your -- your
7 question would be, is, okay, that project is going to be
8 complete in 2024, what's going to happen between now and
9 2024?
10 Because if it's going to be a construction
11 project, then the chances are I'm actually going to have
12 some special damages related to noise, lack of access,
13 the -- the -- being lost tenancies, for instance, down
14 there, due to that construction project.
15 So those would be things, they're necessary for
16 the project to be complete and to be put in place, and
17 they would have to be considered in application of the
18 project, and the -- any benefit that you've received.
19 So it would be looking -- the near term would be
20 this, and then you would evaluate the future condition.
21 **Q. And these pictures were taken when?**
22 A. This morning.
23 **Q. Okay. So these are pictures as of November --**
24 **March 3rd.**
25 **Is it your understanding that as of October 1,**

1 A. -- this -- this is sort of almost by way of
2 summation.
3 **Q. And, again, we're at page 2 of -- we're**
4 **commenting on page 2 of the Macaulay Special Benefit**
5 **Proportional Assessment Final Study.**
6 A. And this is really just reviewing my criticism
7 of the study that these benefits here, that they've been
8 outlined here. This is clearly an assignment of
9 benefit.
10 These are conclusions that are made and
11 adjustments made to before values to calculate this
12 lift. These are not measured values. They're assigned
13 values. That is -- that is completely arbitrary. You
14 know, it's -- there's no measurement of that increase.
15 It's merely an assignment. And -- and I think that's
16 incorrect.
17 The -- the benefits should be measured. And
18 let's think about it. There are parks all over this --
19 over Seattle. You know, there's Cal Anderson Park, up
20 on Capitol Hill. What's the benefit of being close to
21 that park?
22 Lake Union Park, South Lake Union Park; what's
23 the benefit of being close to that park?
24 Discovery Park. Green Lake; you know, what's
25 the benefit of being close to that park?

1 You know, you could do matched pair studies,
2 Discovery Park with Ballard. You could do matched pair
3 studies that looked at what is the beneficial
4 association in having a park in that community and --
5 and how much of a rise of property does it create, if
6 you can measure it. And -- and none of that was done.
7 There's not a single study in Seattle that measured it.
8 It's merely just assigned. It's not measured.
9 **Q. And using those examples, some of them are**
10 **waterfront and some of them are not?**
11 A. Yeah, exactly. Kirkland has a park. You know,
12 Downtown Kirkland has a park. Where's the study -- you
13 know, Kirkland has office buildings, and apartments, and
14 condos. Where's the study that shows where a benefit
15 would be created by those improvements?
16 So there are lots of examples locally not
17 measured. You know, we go to different cities, grander
18 parks, you know, there's -- I think things should be
19 kept local. And I think if -- if this -- if this were
20 true, that this would happen in Seattle, then there has
21 to be an example of it happening and being in place.
22 And there are long-standing parks in areas, and you
23 should be able to tease out -- if you can measure it,
24 you should be able to tease it out and measure it. And
25 it's not done as part of this study.

1 **Q. So just to -- to characterize this debate. It**
2 **sounds like it's Mr. Macaulay going from grand park**
3 **examples in other cities without local park comparable**
4 **sale data. And your recommendation would be to start**
5 **with the local first and then to use -- to expand if you**
6 **needed to?**
7 A. Yeah, because the -- all the information that
8 I've read from his study on those areas is anecdotal.
9 Oh, yeah, from a broker or something, yeah, this -- this
10 is -- increase this, and then -- there's too much noise
11 in there. You know, there's views considered where
12 views aren't meant to be considered.
13 The area that might have been an old industrial
14 area, then converted to a park, well, that's not what we
15 have in Downtown Seattle.
16 It's going to be a newly improved street versus
17 a street with more trees and a boulevard. So yeah,
18 absolutely. I think that -- that it should have -- if
19 three percent -- and -- and as I've said before, these
20 percentage increases fall lower than the margin of error
21 in the analysis and clearly can't be measured. You
22 cannot measure -- you cannot measure one percent of a
23 difference in a high-rise building for this kind of a
24 medium. It just can't be done. And therefore, it's
25 simply assigned to a before value. And I don't think

1 that that's -- that's accurate and meets the standard.
2 So if you could show that, then we should have
3 local studies showing that.
4 **Q. And can you comment a little bit further about**
5 **the current condition -- the before hypothetical and the**
6 **after hypothetical in light of that omission from his**
7 **analysis?**
8 A. Well, that further compounds the complexity,
9 obviously, because we have to -- we have to make
10 assumptions about what the before condition would really
11 look like. You know, I mean -- there's been discussion
12 about the diameter of the trees.
13 You know, I think, you know, we're getting down
14 to a level where the -- the ability for an appraiser to
15 discern a value difference between the diameter of a
16 tree, I think it verges on being ludicrous.
17 It's -- you know, clearly, at some point, you
18 have to have a really well-defined set of criteria.
19 These images came very late in the day. I think they're
20 helpful in trying to see what the differences are. But
21 then we need to layer the other things on how long is it
22 going to take, where are the improvements, you know --
23 every -- every -- this is a long boulevard, big
24 differences in certain sections. Where are they? How
25 far are you away?

1 There's just a lot -- you know, 50 --
2 $50 billion of real estate, it's -- in my mind, it's an
3 overwhelming project.
4 And to -- and to suggest that $56 billion of
5 real estate increases by .8 percent because of this
6 facility, that -- I don't think that meets any appraisal
7 standard that I've seen.
8 **Q. How would you use comparative sales, as an**
9 **example, from these other waterfront parks to try and**
10 **tease out the value as exists, the hypothesis of a WSDOT**
11 **completed project and the hypothesis of a grander park,**
12 **if you could?**
13 A. Well, I'm not sure it could be done. You know,
14 in -- in reading Mr. Macaulay's deposition, he -- for
15 instance, you know, there's an example offered that he
16 reckoned the food and beverage cost per person would --
17 in a hotel, would increase from $35 by 1.75 percent to
18 $35.61. You know --
19 **Q. Because of the Waterfront Park?**
20 A. Because of the Waterfront Park for a hotel
21 located several blocks away from the park. That's an
22 assignment of an increase.
23 He's not actually going to say the Marriott down
24 near South Lake Union and say, well, the manager
25 reports, yeah, actually, we managed to sell a little bit

1 more per room because we find people like to walk to the
2 park, and I can show you that side-by-side figure and
3 here's the difference.
4 I mean, it -- to just assign that kind of
5 difference is -- it's pure speculation. It's
6 imagination. It's imaginative and it's speculative to
7 do that without the data to do that. There's nothing
8 I've seen that says 1.75 percent is the -- the
9 measurement. How do you come up with something like
10 that?
11 So I just -- I don't -- I don't think the rigor
12 is there to prove that a property has had a rise in
13 value of that amount.
14 **Q. Is there any assessment -- any component of this**
15 **assessment, because of the hypothetical before, that is**
16 **collecting money from improve -- from improvements that**
17 **are supposed to be excluded and don't exist?**
18 A. Well, since he's used current values, which are
19 based on what is there now, what -- what I found was
20 missing from the study is, I would want to see -- the
21 City is required to put in a improvement infrastructure
22 down there, very similar, actually, to what the LID is.
23 When you look at the two -- and we looked at this
24 example -- they're very similar. They have street
25 trees. They have a boulevard, it's just less

1 **Q. Okay. So I think we've -- is there anything you**
2 **want to add?**
3 A. No.
4 **Q. So can you just summarize your -- your opinions**
5 **based on review of the final benefit assessment --**
6 A. Yes. He's -- he -- in my opinion, he hasn't
7 properly teased out general benefits and deducted them.
8 He has not calculated the value increment associated --
9 associated with establishing a before condition.
10 He's not measured special benefits; he's
11 assigned them. His assignment is at -- in the 1 to
12 4 percent range is below the margin of error present in
13 the data and is, in fact, technically not measurable.
14 If you have a scientific experiment and you have
15 a standard of error greater than what you're trying to
16 measure, you can't measure it.
17 I think -- there's an inequitable treatment of
18 different types of property. And -- and I think the
19 property type itself, the complexity of downtown real
20 estate, you know, $56 billion of property, I've -- at
21 the average King County home price, that's like 93 homes
22 in value -- is so vast that I think it's -- it's beyond
23 a reasonable ability to accurately sort of take all of
24 that and -- and attempt to assign special benefit to it
25 all. For a linear park, given the uphill nature of

1 downtown and, again, the complexity of the real estate.
2 You simply cannot measure this kind of real
3 estate, the value of this real estate, so incrementally,
4 as has been done in this study.
5 **Q. And so are you confident, on review of**
6 **Mr. Macaulay's appraisal, that he has demonstrated the**
7 **benefit to the parcels to be actual, physical, and**
8 **material and not merely speculative or conjectural?**
9 THE WITNESS: No.
10 MR. FILIPINI: Object as leading.
11 THE WITNESS: I feel that the --
12 HEARING EXAMINER VANCIL: Sustained.
13 THE WITNESS: Oh, sorry.
14 BY MR. LUTZ:
15 **Q. Well, could you comment on how that -- how**
16 **the -- his opinion relates to the legal standard?**
17 A. Well, I think it's speculation. I think
18 there's -- I think it's speculation. I think it's
19 imaginative, and I think it's remote because of the time
20 issue.
21 And so I don't -- it's not a measurement. I
22 think he's assuming that property values will increase,
23 but he's not actually measuring them. It's not -- it's
24 not a measurement study. Like I said, it's an
25 application of benefit.

1 A. Yeah, that would almost be a requirement, right?
2 So I mean, they can't build them if they don't have the
3 money.
4 **Q. Right.**
5 A. Or the bonding.
6 **Q. Part -- part of what I understood the objectors**
7 **in today's cases and others to be saying is that, this**
8 **is unusual in that the -- an unusual LID, in that the**
9 **improvements are not yet built. So it's not a situation**
10 **where we built the improvements and then passed the hat;**
11 **it's reversed.**
12 A. Well, actually, no, that's not -- that's not the
13 objection. The objection is -- there are two issues.
14 One is the before condition that it's being compared to
15 is not yet built. That is unusual.
16 Usually in an LID, you have a pre-condition,
17 which is in place, and you go out and measure it. And
18 then you have a condition with the LID in place. So
19 that part's unusual.
20 But the aspect that is unusual in this case is
21 the time frame. Five years is -- five years and the
22 type of improvement is a long period of time.
23 It's not like we're putting a sewer in the
24 ground and it's going to be a six-month or a 12-month
25 project. This is a five-year project. And it involves

1 working over water, which is a highly regulatory
2 environment. And -- and there's millions of dollars
3 involved, and it's also an aesthetic.
4 So it's -- there's, you know, the type of
5 plants, the diameter of the trees, these are things that
6 probably are subject to change depending on, you know,
7 the time of year they get put in and so forth.
8 So I think those are very different aspects of
9 this. But it's mainly the time frame of five years.
10 **Q. And so do you agree that in a situation where**
11 **the municipality has not yet built the improvement -- so**
12 **the after case --**
13 A. Yeah.
14 **Q. -- that the municipality would have to make**
15 **certain assumptions about -- in order to value the**
16 **improvements about what they will be; correct?**
17 A. It has to make an assumption about what they --
18 well, it has to make a forecast of what they will be.
19 You know, they -- they're going plan for them.
20 They're not going to assume what's there. They're going
21 to plan it and budget it, and then they also have to
22 project when it's actually going to be in place.
23 **Q. Okay. If I understand your testimony just now**
24 **and also on direct, you take issue with the time frame**
25 **here between the -- the before scenario?**

1 A. Yeah.
2 **Q. Before-LID scenario and the after, and that**
3 **2024; is that correct?**
4 A. Yes.
5 **Q. And it -- did I hear you correct earlier to say**
6 **that beyond one year, if that after scenario is more**
7 **than one year out, that it can't be done?**
8 A. No. I've always said it can be done. It hasn't
9 been done. You can have it -- I think a reasonable
10 shortcut for an appraiser is when it is within the --
11 the improvements will be in place in a relatively short
12 time. Curbs, gutters, sewer, they're going to be in
13 place in a period of, like I said, six months or a year.
14 Then I think there's some license given to the appraiser
15 to do a before and after study that is in the same
16 general time frame.
17 Because the time frame -- for instance if you
18 were going to build a project, you likely couldn't get
19 the permits before the sewer is in place anyway. So I
20 think there's a reasonable license if it's a relatively
21 short period of time.
22 In the case of an improvement that's not going
23 to be in place for five years, you can have huge changes
24 in the environment. Buildings can be built. In fact,
25 they will be built between now and when the -- the

1 boulevard is complete. That changes the landscape,
2 creates view blockages, creates competition, essentially
3 creates a different environment in which the
4 improvements are delivered.
5 I'm not saying it can't be done. I'm just
6 saying it wasn't done here. There should have been a
7 discount provided to -- for the special benefit for the
8 time and the risk associated with the delivery of those
9 improvements.
10 **Q. And let me ask -- let me first make sure I have**
11 **that. Should have been a discount provided for time and**
12 **risk related to delivery of the special improvements?**
13 A. Exactly.
14 **Q. Okay.**
15 **So this is a question I'm going to ask you a lot**
16 **in my cross-examination today.**
17 **How do you know that a -- Mr. Macaulay, or ABS**
18 **valuation did not provide a discount in its analysis for**
19 **the time and risk related to the delivery of**
20 **improvements?**
21 A. Because in his report he indicates that he's
22 assuming it's in place, and in his deposition he
23 indicated -- sorry, not assuming, hypothesizing it's in
24 place.
25 **Q. And so, as a result, you believe he did not**

1 **Q. But do you know if, in the calculation of any**
2 **particular parcel's value before and after, do you know**
3 **if he took again, the risk associated with time or risk**
4 **of special damages, as you called, it into account?**
5 A. He did not.
6 **Q. And, again, I'm trying to understand -- I**
7 **appreciate the clarity of your answer, but I am trying**
8 **to understand what is the basis for your opinion, and I**
9 **take it that it is the existence of the hypotheticals?**
10 A. Right. If -- if he had done it like it should
11 have been done, he wouldn't have made a hypothetical.
12 But his hypothetical allows him to leapfrog the distance
13 in time and the condition that the property will be in
14 for the next five years before it's realized.
15 **Q. And if I'm -- to understand your testimony from**
16 **a few minutes earlier, what -- so what's -- what's the**
17 **difference between assuming a hypothetical in this**
18 **scenario, at least with respect to the after condition,**
19 **and another LID where a municipality has not yet built**
20 **the -- let me rephrase that.**
21 **Doesn't the after condition for the construction**
22 **of LID improvements, the valuation of those, always**
23 **assume a hypothetical?**
24 A. Like I said, it's -- it's a reasonable -- it
25 doesn't always.

1 When we do -- when we do a special benefit
2 assessment, we make sure we know when it's going to be
3 delivered and -- and the time frame it's going to take
4 to do that. So, no, it doesn't always.
5 But like I said, there -- there is a recognition
6 of a small project which is going to be completed in
7 short order that you might, under those circumstances,
8 say, you know, these are just street improvements.
9 They're not going to take very long to do, and I'm going
10 to look at it today with or without the improvements,
11 because it's -- you know, it's going to be like a
12 six-month project or a 12-month project. It's not --
13 it's within a reasonable period of time.
14 And if you were planning on doing something with
15 that property, like -- sewer is a great -- great
16 example. If sewer, brought to a property, allowed that
17 property to be subdivided and become a plat, the time
18 frame for putting a plat in place is, you know, like
19 18 months to two years versus getting the sewer there.
20 As long as the sewer is in time for the plat, then --
21 then it doesn't really matter that there's a short delay
22 in getting the sewer there. So you would -- you could
23 then book that value, recognizing it's going to come.
24 But in this particular case, we're talking about
25 five years. And -- and we're talking about an

1 environment that will see -- that -- where buildings
2 will be built within that time frame.
3 You know, so somebody can get permits and build
4 a building before the City's got this project complete.
5 So a complete change of circumstances can happen.
6 Hotels will see new competition, for instance, between
7 then and now, that could totally change the manner in
8 which the special benefit is received, if it is
9 received.
10 **Q. And let me make sure I have your testimony**
11 **clear. So how could -- well, let me state. Could**
12 **Mr. Macaulay have done this in a way that would meet the**
13 **standard you laid out? In other words, to account for**
14 **the future discount provided for time and risk related**
15 **to the delivery of the improvements?**
16 A. Absolutely. It's something that appraisers do
17 all the time. You might be appraising a property and
18 know that there's going to be a re-zone in a couple of
19 years. And you look forward to that and see, you know,
20 when -- what's the probability of that happening?
21 What's the probability of it not happening?
22 So -- so absolutely you would -- you could make
23 a forecast of activities.
24 Same way if you're appraising a condominium and
25 a tower is going to be built in front of it that's going

1 **Q. And -- and let me ask, how should his study**
2 **reflect the analysis he underwent to get from current**
3 **property value to before LID property value?**
4 A. Well, I think that here's a great example. The
5 park has, like, four-inch diameter trees, and the before
6 condition will have like two-inch diameter trees.
7 So where -- where in the analysis is there an
8 understanding of what that difference is?
9 And I think this -- in my opinion, this has been
10 a problem right from the get-go, going right back to
11 those pictures that I showed you, where there's been
12 this sort of rolling up of the current condition into
13 the -- the finished LID without consideration of what
14 kind of lift would occur with the street improvements
15 the City's required to put in there anyway.
16 And I think if an appraiser is using current
17 sales and current sales activity to develop values for
18 all of downtown, how can you get to that before
19 condition if you don't incrementally account for that
20 lift?
21 **Q. Right. So my questions are -- I'm trying to get**
22 **all -- all of your reasons why you believe that**
23 **Mr. Macaulay hasn't accounted for that lift.**
24 **And I understand that your testimony is -- you**
25 **believe the study would have more on the topic? Would**

1 **have measurements, would have --**
2 A. Yes.
3 **Q. -- analysis?**
4 A. Yeah.
5 **Q. And do you believe that his failure to -- and**
6 **I'm sorry, I'm going to say, alleged failure -- to put**
7 **in his study this level of detail is a -- a failure to**
8 **meet professional appraisal standards?**
9 A. Yeah, because -- you're -- you're citing a
10 hypothetical condition, and, under standard appraisal
11 standards, you should represent what difference that
12 makes to you than the current condition.
13 You know, that's a -- that's a very -- it's like
14 you're -- you're appraising a property subject to --
15 you're hypothesizing a building is built when it isn't.
16 You know, that creates a requirement on the appraiser to
17 remind, you know, what does that hypothetical do to the
18 value? How does that hypothetical change the value?
19 And there is virtually no discussion about it in
20 the report.
21 And I think I'm being particularly hard on him
22 here, because the before condition is so eerily similar
23 to the after condition, when you look at the pictures
24 and aesthetics and, you know, where -- where he's
25 valuing an aesthetic here. And so I think that places

1 additional burden on him to explain why, you know, a
2 four-inch diameter tree creates more value for a hotel
3 eight blocks up the street than -- than does a two-inch
4 diameter tree.
5 **Q. So coming back to -- I asked you for the**
6 **evidence that you have that Mr. Macaulay did not**
7 **independently -- or I'm sorry, did not value the**
8 **difference between current and before. I understand**
9 **your answer to be you would expect there to be more in**
10 **the report.**
11 **What if he did? What if, in fact, Mr. Macaulay**
12 **and his team, in doing the 6,000 plus assessments here,**
13 **did make adjustments from current market value to before**
14 **LID value, would that affect your opinion?**
15 A. Well, I think those should be available for
16 review in conjunction with the cost of putting in those
17 street improvements so that -- so that one could make a
18 judgment call as to whether they have been properly
19 dealt with.
20 **Q. And so let me follow up on that. What is the --**
21 **why would we need the cost information?**
22 A. Well, because the -- the -- there's a test in
23 the -- the special benefits study about, you know, costs
24 not exceeding -- sorry, the special benefit value not
25 exceeding the cost in place.

1 **what that would look like. So let's break that down.**
2 **If you're going to pick a particular parcel and**
3 **apply an after value to it, how would you -- how would**
4 **you calculate that after -- that after value? What --**
5 A. Well, if I was going to do a study on a park and
6 looking around Seattle, I would look at condominiums
7 that were close to parks and see if, you know, more
8 condominiums are built, they achieve generally higher
9 values, and then you could -- then you could go in to
10 study and say well, these properties will achieve higher
11 values.
12 **Q. Okay. And you would have done that in a mass**
13 **appraisal approach?**
14 A. Well, again, I -- as you know, I have a lot of
15 problems with the creation of a study with this many
16 properties in a downtown area. I think there are some
17 elements there. So I wouldn't have done it for a study
18 like this. I don't think you can do it. I don't think
19 it's possible to do.
20 **Q. Okay. So you don't believe it's possible, at**
21 **the end of the day, to derive the after values in a**
22 **study like this?**
23 A. The concept that $56.3 billion of property went
24 to $56.8 billion of property as a consequence of this
25 landscape boulevard, I -- there is no way of

1 authenticating that kind of value change.
2 **Q. Okay.**
3 A. This type of real estate is -- just does not
4 lend itself. Market forces completely obliterate any
5 tiny little noise factor like that.
6 **Q. So -- so the answer to my question is, you don't**
7 **believe it's possible to derive the after values here on**
8 **this project?**
9 A. I do not -- well, I do not, no.
10 **Q. And how about given the project characteristics,**
11 **was it possible to derive before values on a project of**
12 **this -- like this?**
13 A. Well, you can derive before values, but you
14 would have to recognize the kind of margin of error you
15 have.
16 So if you're -- if you're doing a study where --
17 I'm sorry, I'm feeling like an old record here. If
18 you're doing a study, your margin of error is greater
19 than what you're trying to find, your study fails.
20 **Q. Right. So let me ask you a question on a -- and**
21 **I'm trying to understand the -- where is the floor, in**
22 **your mind, for the incremental increases in property?**
23 **And I know you've testified that you can't measure**
24 **incremental increases in property of one percent, you**
25 **said a few minutes ago.**

1 **time, increases lower than that?**
2 A. Well, I -- if you're looking for the difference
3 and -- and that is the goal of the -- the project and
4 you're getting down to the point where -- like you said,
5 two appraisers on the same day, equally motivated to
6 come up with the right answer, create that difference
7 for you. I think you would argue that that difference
8 is a matter of mere noise. It doesn't take on special
9 significance like it is put to in this study.
10 HEARING EXAMINER VANCIL: We'll take a break
11 there and return at 3:15.
12 MR. LUTZ: Thank you.
13 (A break was taken from 3:02 p.m. to 3:20 p.m.)
14 HEARING EXAMINER VANCIL: We'll return to
15 the record. Mr. Gibbons on cross.
16 BY MR. FILIPINI:
17 **Q. I'm going to hand you what has been marked as**
18 **Exhibit 3 in this proceeding. It's Mr. Macaulay's final**
19 **benefits study. And I want you to have that cleanest**
20 **copy --**
21 A. Do you have a magnifying glass?
22 **Q. I know. Wow, it's even worse on -- on these.**
23 **And then Mr. Edlund-Cho was nice enough to make us some**
24 **copies of that particular page.**
25 **HEARING EXAMINER VANCIL: Which page are you**

1 information as confidential -- well, we don't. There's
2 no way you can do it.
3 HEARING EXAMINER VANCIL: There's no
4 confidential at this point.
5 MR. FILIPINI: Yeah, I -- I will just follow
6 up with just a reminder later, and we can talk about it
7 off line.
8 But my -- my objections would be, you know,
9 I don't think it's on cross. And leading.
10 MR. LUTZ: My -- so my question is, as a
11 hypothetical, if --
12 HEARING EXAMINER VANCIL: I understand that
13 you're re-asking the question.
14 MR. LUTZ: I'm re-asking the same question.
15 Withdrawing the earlier version of it.
16 HEARING EXAMINER VANCIL: Rephrasing and
17 re-asking.
18 BY MR. LUTZ:
19 **Q. Rephrasing the question. If, as a**
20 **hypothetical -- because we're not talking about the**
21 **specific exhibit -- Mr. Macaulay is making micro**
22 **assumptions as to percentages, rather than macro**
23 **assumptions as to one percentage, does that increase the**
24 **reliability of his report?**
25 A. It doesn't, because it goes to the same issue.

1 If you're -- if you're making an adjustment to
2 parameters used in the before to calculate the after,
3 then it's the adjustment that you're measuring, not --
4 not the difference.
5 Again, I'm -- it's -- you're concluding as to
6 what the difference is versus measuring the difference.
7 MR. LUTZ: Okay. I have nothing further.
8 HEARING EXAMINER VANCIL: Thank you,
9 Mr. Gibbons.
10 THE WITNESS: Thank you.
11 MR. LUTZ: And -- and my colleague,
12 Mr. Stillwell, is going to take over the questioning of
13 the next witnesses.
14 HEARING EXAMINER VANCIL: Okay.
15 MR. STILLWELL: And for the record, I don't
16 think I was here when we began, I'm Jacob Stillwell,
17 from Perkins Coie, on behalf of objectors.
18 HEARING EXAMINER VANCIL: Thank you.
19 Mr. Stillwell. Please proceed.
20 MR. STILLWELL: We'd like to call
21 Randall Scott.
22 And I have a list of specific objectors in
23 the cases that Mr. Scott will be testifying about that I
24 can enter in as an exhibit. I don't know if you want to
25 swear him in first or if you want to --

1 talking about. You've already figured out areas --
2 because you might wind up with having different models
3 in different places and different models for different
4 property types and so forth. That's all -- that's all
5 fine. That's all imaginable.
6 But you -- at some point, you have to rationally
7 specify what is going to create value, and then you have
8 to take -- that would be in line with if one -- one
9 would expect a bigger property to sell for more. That's
10 an expectation.
11 The calibration development is when you take the
12 data that you have, apply it to the information sources
13 that you consider valuable, which could be sales of
14 properties. But I would also point out that it could
15 also be a single property appraisal; right?
16 So -- just if this doesn't take too much of your
17 time. The State of Washington, for instance conducts
18 what they call ratio studies of assessors' performance.
19 And what they will do is that they'll identify a strata.
20 And if they don't find enough sold properties in that
21 strata, they will go out and appraise a property and put
22 that into the sample and now compare their model results
23 with that appraisal. That -- that is where most of the
24 hard work gets done.
25 Because we all -- it makes sense that newer is

1 number at the end. It's going to come out of there.
2 And every time you do it, it will come out with the same
3 number. And if you change the characteristics, you'll
4 get a different number; right?
5 **Q. And so is -- and so are you saying that that is**
6 **an example of a properly applied methodology and**
7 **calibration?**
8 A. Correct. I don't claim that this document right
9 here constitutes a fully reported mass appraisal model,
10 because that wasn't the point. I just wanted to show
11 the difference between the parameters in the model
12 structure and the coefficients estimated in the
13 calibration process.
14 **Q. So is it -- would it be fair, then, to**
15 **characterize this example as just simply showing how --**
16 **how a properly -- a properly demonstrated model is**
17 **calibrated when all parts are operating --**
18 A. Yes.
19 **Q. -- correctly?**
20 A. Correct.
21 **Q. Could you please discuss what that would look**
22 **like in a mass appraisal?**
23 A. Actually, it would look very similar to that,
24 except that you would very likely have a different model
25 for -- for different property types.

1 Notice that one of the requirements is you have
2 to define -- this is back to .2 on that seven-point
3 list. You have to define the market area of consistent
4 behavior, and you have to identify the characters that
5 affect the creation of value in that large area.
6 Well, so if I'm talking about hotels, that's not
7 necessarily the same thing as self-storage, not
8 necessarily the same thing as parking lots. Not --
9 right, you're going to come up with different
10 characteristics. So you might wind up with different
11 models; right?
12 But for an -- for a perfectly good example, what
13 one could have done if the job was to ask the question
14 how good a model does Crocker Liu have, you could have
15 taken all the hotel sells in your area, fed them through
16 his model, and then -- and then you -- that would have
17 been the point where you were reviewing the mass
18 appraisal results. And then you would see how close did
19 we get with -- how close did that model get to the sales
20 that are actually reflected; right?
21 Normally speaking, that's the goal of the
22 assessor's office. That's the goal of the mass
23 appraisal. But mass appraisal does not have to be for
24 tax purposes. It's for any universe -- in this case, a
25 perfectly good application area for mass appraisal

1 techniques and methodology. I personally don't see that
2 it was done the way I would have thought would have been
3 appropriate.
4 Because at the end of the -- for instance, if
5 somebody ever wanted to go home on their own computer
6 and just see a mass appraisal report, the King County
7 Assessor puts out one report for every area every year.
8 And one of the things that's very important is Item
9 No. 7, reviewing the mass appraisal results. The -- the
10 summary result, the one that really makes the difference
11 is where they compare the results of their model output
12 with the sales that are out there. Because the State of
13 Washington wants you to be at a hundred percent.
14 They will tolerate different numbers but not too
15 far away from a hundred percent. So you have to show
16 them that, by changing these values the way that we did
17 from last year to this year, now our ratio, if you will,
18 went from 80 percent to 95 percent. So that's a --
19 that's a proper movement. And you can see it. And you
20 can see in the equation that expressed that number in
21 the first place how you got there.
22 Now, it if it came out -- quite frankly, when I
23 worked for the King County Assessor's Office many, many
24 years ago, one of my first jobs was valuing all the
25 major office buildings in downtown Seattle. So I had a

1 spreadsheet and -- I had a spreadsheet and I categorized
2 each of the major offices into about five or six
3 different types. And then I had a table. And I said,
4 if you're in type one, here is your rent, here's your
5 vacancy, here's your operating expense, here's your cap
6 rate. And that gave every one of those properties a
7 value.
8 And if I didn't like the way -- and that whole
9 spreadsheet is tied to a graph. Think of going to the
10 rifle range and trying to zero the weapon, and you find
11 out that your -- all your hits are down here. They're
12 consistently off to the lower right. Well, you've got
13 to move it up to the center, otherwise you haven't
14 passed the test; right?
15 **Q. So are you -- and so is your testimony, then,**
16 **that when you're developing a model, if you don't first**
17 **have -- if the model that you're using is not specified**
18 **or you're just not using one to begin with, then you're**
19 **not able to calibrate it properly because you're not**
20 **able to put in those -- those inputs into your model?**
21 A. Well, yeah, my view is that if you haven't
22 specified the model, then I, as a user of your report,
23 don't really know how you got your value.
24 **Q. And I think that's the important point.**
25 **So my next question, then, is how -- what**

1 **relevance is that conclusion? So your testimony is, it**
2 **sounds like you're unable to test the model used in the**
3 **Macaulay study. What impact does that have on these**
4 **assessments? Why does that matter?**
5 A. In my personal view, it means that the study
6 that put these values out is not credible.
7 In -- in my personal opinion, a mass appraisal
8 does not exist here. And therefore, what we have is a
9 lot of pages about what it's going to be like when it's
10 all done and how pretty that is, and so forth and so on.
11 And then we have a list of values. But I don't know how
12 those values came about. And I get the feeling that
13 maybe nobody else does either.
14 Which should not be. You have to have an
15 appraisal. If you don't have an appraisal, all you have
16 is a list of numbers. Because it's the credibility
17 that's everything.
18 MR. STILLWELL: I have no further questions.
19 Thank you.
20 HEARING EXAMINER VANCIL: Cross?
21 MS. THOMPSON: Good afternoon.
22 CROSS-EXAMINATION
23 BY MS. THOMPSON:
24 **Q. So you said that you've been working with**
25 **Northwest Property Tax consultants for 18 years; is that**

1 **USPAP standards, what legal effect does that have on the**
2 **appraisal?**
3 A. Well, I'm not sure. That's a legal question.
4 I'm not a lawyer. What I am saying is that -- is that
5 if -- so yeah, I'm not -- I'm not -- I don't think I'm
6 qualified to answer that question.
7 I think that what the point of saying that an
8 appraisal -- I mean, I can give you an example, if you
9 don't mind.
10 I did a review appraisal of an appraisal of a
11 paper mill in Longview. And -- and I concluded that it
12 was not a credible basis for valuation of the -- of the
13 paper mill. And as a result, the lawsuit in Superior
14 Court went away; right? Because they realized that,
15 well, we're going to need a new appraisal. So that's
16 not a legal effect. That was a -- that was a practical
17 outcome.
18 My -- my concept of credibility is that, if a
19 document claims to be something and it is found not to
20 be that -- and I'm going to maintain pretty clearly that
21 my review shows that the Macaulay document does not
22 report an adequate mass appraisal and it doesn't report
23 it in an appropriate manner. In particular, it doesn't
24 really give us any testing whatsoever.
25 I would say that the document doesn't count as

1 an appraisal. That's just me.
2 **Q. So let me ask you this question a different way.**
3 **You've identified the USPAP standards as the**
4 **ruler that you've judged the ABS report against; is that**
5 **correct?**
6 A. Yes.
7 **Q. Have you used any other standards in evaluating**
8 **the report?**
9 A. No.
10 **Q. And the USPAP standards, those are viewed in the**
11 **industry as guidance for how appraisal reports should be**
12 **prepared?**
13 A. Mandatory guidance.
14 **Q. Mandatory guidance?**
15 A. That's why it has lots of words like "must" as
16 opposed to "may." There's some "mays" in there.
17 **Q. So I want to move to your appraisal review --**
18 A. I should back up. It's mandatory when required.
19 So federally related transactions have to be
20 done according to USPAP. Others can be done because of
21 an agreement between the client, that that's
22 appropriate.
23 But most of us would have the view that it's a
24 set of minimum standards that should be complied with.
25 If you don't, you're not up to professional stuff.

1 C E R T I F I C A T E

2

3

4 STATE OF WASHINGTON)
) ss.
5 COUNTY OF KITSAP)

6

7 I, CRYSTAL R. McAULIFFE, a Certified Court
8 Reporter in and for the State of Washington, do hereby
9 certify that the foregoing transcript of the proceeding
10 before the Hearing Examiner on MARCH 3, 2020, is true
11 and accurate to the best of my knowledge, skill, and
12 ability.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 18th day of March, 2020.

15

16

17 _____

18 CRYSTAL R. McAULIFFE, RPR, CCR #2121

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Exhibit 2

Seattle Waterfront LID Assessment Hearing

Seattle LID Public Comment Hearing

March 5, 2020

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8 Seattle Waterfront LID Assessment Hearing
9 BEFORE
10 HEARING EXAMINER RYAN VANCIL
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14 Taken at 700 Fifth Avenue
15 Seattle, Washington
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24 DATE TAKEN: MARCH 5, 2020
25 REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

1 A P P E A R A N C E S

2

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1 **Q. Thank you.**
2 **Can you speak to the impact of the proximity of**
3 **the Century Square Retail Building to the improvements**
4 **along the waterfront?**
5 **What relationship do they have?**
6 A. The distance, I think, is relatively -- it's
7 relatively large.
8 So, essentially, to reach those improvements,
9 more of those will pass not only most of the transit
10 hubs, the properties adjacent, and up above the transit
11 tunnel, for instance, but you would also bypass,
12 essentially, a lot of other more proximate improvements.
13 To reach the Overlook Walk, for instance, one
14 would have to go -- travel, essentially, the three to
15 four blocks down into the market and then down. So that
16 distance is --
17 **Q. Thank you.**
18 **Turning now on the next page of your report,**
19 **subsection (b) at the top, "Restrictions on Property."**
20 **Did you discover, in your research of the**
21 **building, any development restrictions on Century Square**
22 **Retail?**
23 A. I did. And this has been long-standing
24 knowledge since the 1980s when the property was
25 essentially assignable for redevelopment. The property

1 is limited in its development to a much lower height
2 than is allowed under the zoning. And this is due to
3 the shadow concerns on Westlake Park which is an
4 environmental concern.
5 MR. STILLWELL: And, Mr. Scott, before you
6 continue, I'm going to introduce to the exhibit of a
7 section of Seattle Municipal Code 25.05.675, which
8 discusses areas of downtown where shadow impacts may be
9 mitigated by the City and expressly including Westlake
10 Park and Plaza.
11 BY MR. STILLWELL:
12 **Q. Thank you, Mr. Scott.**
13 **Please continue.**
14 A. Of course.
15 So what you do see there in the -- so this is in
16 the City code. When it says "shadows impacts may be
17 mitigated."
18 The mitigation basically means that the City
19 is -- can, at will, say -- or under consideration say
20 you can't build as high as you think you can because we
21 think the shadows on the park are a factor.
22 This has long been an issue for the property. I
23 believe in the 1980s you can see this is a -- I
24 submitted a -- there was a -- a master's dissertation
25 where different redevelopment considerations were

1 undertaken for the subject property.
2 And what that found was that the shadow impacts
3 were going to be a great concern in terms of development
4 potential for the property.
5 That restriction on the shadows was brought more
6 into bear by the neighboring tower which was developed
7 which then had to have shadow impacts mitigated,
8 including, I believe, a fee to the City.
9 So the property cannot be built to -- consistent
10 with its zoning in terms of the type and the incentive
11 height allowances. It changes the highest and best use
12 of a downtown property that's only built to two stories
13 pretty dramatically.
14 **Q. And what documentation or evidence did you rely**
15 **on for your conclusion that the tunnel is also**
16 **restricting development?**
17 A. The -- so the tunnel does undercut the subject
18 property.
19 As we know, the tunnel travels under Third
20 Avenue and then turns to go up Pine. It does so right
21 under the subject property.
22 I think you have a copy of the Kirk M.I.T.
23 thesis, hopefully.
24 MR. STILLWELL: Yes.
25 And for the record, I'd like to introduce a

1 citation in Mr. Scott's report as to King County
2 Assessor's data from 2009, where we see -- there's a
3 note from the Assessor saying the "improvement," meaning
4 Century Square Retail, "is built over the bus terminal
5 which may restrict redevelopment. The improvement had
6 retail on both upper floors. And the basement can't be
7 used because of the bus tunnel, therefore, limiting its
8 value."
9 And in addition, the M.I.T. thesis Mr. Scott
10 references, I will introduce as well as an exhibit.
11 Mr. Scott has, fortunately, since it's an
12 M.I.T. thesis, excerpted only a few pages and
13 highlighted the areas that specifically discuss how the
14 shadowing and the tunnel create sort of a perfect storm
15 restricting development of this property.
16 BY MR. STILLWELL:
17 **Q. I'm sorry, Mr. Scott.**
18 **Please continue.**
19 A. Thank you. So what -- what both the assessor
20 became aware of is that the tunnel restricts the usage
21 of the property as it stands. It reduces the amount of
22 basement that can be used. The tunnel also restricts
23 how you could build upon the property.
24 So if everything was the same as neighboring
25 zoning, one could build farther away from Westlake Park

1 to avoid the shadow impacts. What this site
2 unfortunately experiences is the undercut of the tunnel,
3 which means right where you'd have to build high to
4 avoid the shadows, you are stuck above the tunnel and
5 can't build, so.
6 **Q. Thank you, Mr. Scott.**
7 **Now, in your review, did the Macaulay report**
8 **take these restrictions into account when estimating the**
9 **before value or the special benefit?**
10 A. I did not observe that it did. The specific
11 characteristics do not seem to consider the basement
12 restrictions in terms of usage. I mentioned the rent
13 role reports of 32,000 square feet.
14 Mr. Macaulay appears to rely on the Assessor's
15 data without concern to the notes which modify that data
16 and along with what the Assessor's valuation of it.
17 **Q. And by "notes," you mean the exhibit that was**
18 **just introduced from the assessor?**
19 A. Correct.
20 **Q. You are talking about those development**
21 **restrictions?**
22 A. Correct.
23 **Q. Thank you.**
24 **If these restrictions were taken into account in**
25 **the Macaulay study, how would they have impacted the**

1 Despite the Joshua Green having on the ground floor a
2 cafe that is able to utilize the sidewalk for cafe
3 tables outside, that will experience an increased
4 benefit due to the improvements of the sidewalk there.
5 It also, of course, has the office above, which
6 can be utilized for rent generation. Similarly, 301
7 Pike, which is the garage property. So that's -- it's
8 on Third and Pike, for instance.
9 Those pedestrian amenities will be improved
10 dramatically in the after. They are relatively low
11 quality pedestrian amenities.
12 According to the IMI scale, they were in the --
13 I show them as, essentially, Level 1. And they will
14 move from Level 1 to Level 2. So a relatively dramatic
15 improvement there.
16 The Ross Building, however, was ascribed a
17 special benefit of $639,000. The subject is at
18 $711,000.
19 **Q. And so considering those two examples which, for**
20 **the record, are also discussed in your report on the**
21 **final two pages, considering those examples against**
22 **Century Square Retail, what is your professional**
23 **conclusion about how the special benefits are allocated**
24 **amongst the properties in the Westlake Center area?**
25 A. I think they are essentially inequitable. And

1 considering the development restrictions on the subject
2 property, it seems to be ascribed a special benefit that
3 is higher than I think makes sense in the face of
4 comparable properties and competing properties.
5 It won't leverage the benefit other properties
6 will be able to do in the face of the LID improvements.
7 MR. STILLWELL: Thank you, Mr. Scott.
8 I have no further questions.
9 HEARING EXAMINER VANCIL: One question I
10 have is did -- Mr. Scott, did you determine -- you
11 indicated that there was an -- in your assessment that
12 there was an inequity.
13 Did you determine what should have been the
14 correct number?
15 MR. SCOTT: I did not. I would put it on
16 the order of the reduction in line with the Ross
17 Building, and that's a property that is relatively well
18 positioned to take advantage of the LID.
19 It's a relatively similar size subject
20 property, and it incurs a benefit of the $639,000. I
21 would put that as a ceiling on the subject property. I
22 don't think that it would be in excess of that.
23 HEARING EXAMINER VANCIL: And you called it
24 the Ross Building. Which address or how else can I
25 identify that besides the name?

1 stuff like that. It is probably more the customer basis
2 is a little bit wider, so it probably includes tourists
3 and people working in the city as well.
4 **Q. Okay. And how long has Equity Residential owned**
5 **these apartments?**
6 A. We purchased Harbor Steps in 2005.
7 **Q. Okay. So let's -- we talked a little bit about**
8 **the -- your involvement with the preliminary study and**
9 **then negotiations of the security measures.**
10 **Let's talk about the current valuations, the**
11 **before valuations for the Harbor Steps parcels.**
12 **Do you agree with those assessments?**
13 A. No. The -- when we look at the before values,
14 they are considerably higher than we would expect to get
15 in any kind of reasonable transaction for the -- for the
16 property as a whole.
17 So we -- we don't agree that -- with the before
18 values.
19 **Q. Okay. Can you -- if you can elaborate, that**
20 **would be helpful.**
21 A. So I guess I would say that the -- the viaduct
22 coming down was a benefit for us. So when the viaduct
23 came down, it's not necessarily just access to the
24 waterfront, it was really more due to the noise of the
25 traffic.

1 Living in the high-rise towers, you would start
2 to hear traffic coming through quite loudly on the
3 viaduct at 5:00 in the morning. So that was kind of a
4 big detriment to -- to the location.
5 And as soon as the traffic on the viaduct -- as
6 soon as it was closed and traffic stopped, the whole
7 area became much quieter, much more pleasant.
8 So we have seen some benefit from the viaduct
9 coming down. I would say that there's some incremental
10 benefit to having better access to the waterfront. But
11 the main benefit to our property is that the noise has
12 subsided considerably in that area. We had --
13 **Q. Is the construction still an issue or is that --**
14 A. The construction is -- is a little bit of an
15 issue, but I think -- right now, like, for example, they
16 are working on moving the Alaskan Way way over, so it
17 makes it a little more difficult to get to the
18 waterfront.
19 But I really don't feel like people live in our
20 building -- their primary reason for living there is not
21 to have access to the waterfront. It's primary to
22 having access to the amenities in the city,
23 particularly, you know, Pioneer Square, First Avenue,
24 Pike Place Market. People that live there live there
25 because they have jobs. They want access to

1 transportation. They want, you know, a quiet place to
2 live in the city where they can have access to all these
3 amenities.
4 So I -- I would say that having the construction
5 on the viaduct is an incremental inconvenience to
6 people, but I don't know that they -- you know, it's not
7 like they are going to the waterfront every day. That's
8 more of a thing that I think people tend to go, you
9 know, on the weekends or, you know, every couple weeks
10 when they are getting out to enjoy the city.
11 It's not as important as -- as the amenities on
12 First Avenue, their jobs, things that people do every
13 day when they live in the city that -- that benefit us.
14 So I guess the final point I wanted to make on
15 that is that the property does have very good views, and
16 that wasn't really changed by the viaduct or the park.
17 We have great views of the waterfront, and a lot
18 of people also come there for the, you know, the
19 high-rise living experience with -- with views of the
20 city and views of the waterfront.
21 **Q. All right. And you -- you're talking on this**
22 **one from personal experience; right?**
23 A. Yes, I am. I --
24 **Q. You live in Harbor Steps?**
25 A. I live there. And I live in Harbor Steps. I've

1 life dictates.
2 **Q. Okay. Well -- and so if the average tenant is**
3 **there, what, a year and a half?**
4 A. I would say around that amount.
5 **Q. And so would you anticipate current tenants**
6 **paying more to rent your apartments based on the fact**
7 **that there's going to be a park there in 2024?**
8 A. No. I think very few -- very few people are
9 making their decision based on that. A lot of people
10 aren't aware of the schedule of the park. They know
11 it's coming. But, you know, they are -- when they --
12 when they come to look at Harbor Steps, they are looking
13 at what's there today. Not something down -- five years
14 in the future.
15 **Q. Okay. Did you have -- did -- did the City's**
16 **appraisal team ask to -- to interview you or inspect the**
17 **property as part of the --**
18 A. Not with respect to the LID.
19 **Q. Okay. So back to these values. You said it**
20 **was -- you said they were over -- that the -- that you**
21 **thought the values were too high.**
22 **Do you have -- have you quantified any amount by**
23 **which you think they are too high?**
24 A. It ranges. And it -- it -- the difference
25 between the preliminary and the final was a little bit

1 hard to comprehend too. Because between the final and
2 the -- or between the preliminary and the final, some of
3 the buildings went up in value -- in before value by
4 10 percent. Some of them went up by 20, 25 percent. So
5 it didn't really make a lot of sense, the changes from
6 preliminary to final, to us.
7 But, you know, I would say, typically, most of
8 the before values that we see in the LID are on the
9 range of 10 to 25 percent higher than what we would
10 expect those buildings to transact for.
11 **Q. And you said -- you said that the rents went --**
12 **the rents went up because of the viaduct going down. So**
13 **it's not like there hasn't been an increase in value?**
14 A. Right. Yeah. Right. If you were to look back
15 to Harbor Steps in 2018, you know, the values would have
16 been significantly less than that.
17 And part of that is just, you know, downtown
18 rents have been good. The viaduct going away has made
19 the area more attractive. So we did get increased rents
20 in 2019.
21 **Q. Okay. And can you talk about the drivers for**
22 **your -- for your apartment rentals over maybe the past**
23 **five years?**
24 **Well, you only came in 2018, but before that you**
25 **were managing finance.**

1 A. Yeah. Right. No, I have a fairly good
2 understanding of the, you know, recent history of the
3 market.
4 And I mean, the value of the buildings and the
5 rents are really driven largely by supply and demand,
6 which, in this case, is heavily due to the, you know,
7 tech job -- technology jobs in Seattle. There's been
8 just, you know, incredible growth of population in
9 Seattle, but also high paying jobs.
10 And that is really kind of the number one driver
11 that we think of is driving our rents forward.
12 Just, you know, an example of -- how -- how
13 quickly that relationship and how much of a driver that
14 is, is that -- there was a time in late 2017 where
15 Amazon was kind of -- which has a lot of jobs in the
16 city which was-- Amazon kind of announced they were
17 pulling -- they were putting some of their job hiring on
18 hold and slowing down until they kind of re-strategized.
19 And the effect on rents was immediate and quick. As you
20 see fewer people moving to town for those high-paying
21 tech jobs, the rents started to go down. And we
22 struggled throughout 2018 because of that.
23 Because what we had was the job growth was a
24 little bit slower and there were a lot of new product
25 coming online. And so that's -- that's what -- that's

1 the formula for slower rent growths in this business.
2 And as -- as the job -- the jobs pick up, the
3 job growth picks up in the city; that's when we see the
4 rent growth pick up.
5 **Q. And so has it again? I mean, you've gotten --**
6 A. It has. It has. Yeah, I think Amazon has a
7 record number of technology job postings right now,
8 like, 11,000.
9 And as we see people, you know, moving into town
10 for those jobs, that's where we start to see rent
11 increasing.
12 **Q. Okay. Speaking of that shorter cycle, can**
13 **you -- you said you started at Equity in 2006?**
14 A. Yeah.
15 **Q. Can you talk about the -- the five-year cycles**
16 **in the real estate market from 2006 to today?**
17 A. Yeah.
18 **Q. That you've experienced.**
19 A. Certainly, yeah. I -- I was fairly new in the
20 real estate industry back in 2006.
21 And we saw a downturn of -- you know, in --
22 2007/2008 with the housing crisis and the mortgage
23 issues with housing. And it really -- it did affect the
24 apartment business. Probably more than it should have,
25 because at that point in time, as rents were dropping,

1 as people were defaulting on mortgages, you know, real
2 estate companies were struggling just to, you know, make
3 their payments and stay alive.
4 So the focus was really much more on do I have
5 enough capital to keep operating and that I'm not going
6 to default on my loans? And the transaction market and
7 the liquidity of assets just kind of froze.
8 And at that point in time, you know, we're a
9 public company, our stock price declined over
10 50 percent. And, you know, it was just -- it was kind
11 of a scary time for the industry because you didn't know
12 if it was going to come back and how long it was going
13 to be.
14 Fortunately, for the apartment industry, all of
15 the, you know, mortgage foreclosures and people losing
16 their houses meant people moved to apartments and the
17 business recovered faster than other sectors of the
18 economy. But it still took people a long time to get
19 trust in the business.
20 So, you know, it wasn't until 2013 to 2016 where
21 we actually saw investment really start to ramp-up in
22 the apartment business. And, you know, then you saw
23 rents kind of increase disproportionally at that point
24 because there wasn't a lot of product built in the --
25 you know, after the downturn to around 2013.

1 **Q. And let me just stop you there.**
2 **So what you said, if I interpreted it right, you**
3 **just kind of -- you can amplify on it.**
4 **People were moving into apartments so the**
5 **apartment business was strong, but the investors were**
6 **still nervous, so you weren't getting --**
7 A. Right.
8 **Q. -- new supply until later?**
9 A. Yeah. And there's a long period of, you know,
10 when you start to develop a building and go through the
11 permitting process to when you actually bring that
12 building online, that creates these imbalances because
13 of this timing lag.
14 And so you can see very massive turnarounds in a
15 short period of time. And I think, you know, our
16 economy has been very good for the last five years. And
17 a lot of people in the real estate business are
18 concerned that, you know, any kind of negative event or
19 macroeconomic factor could turn that to the opposite
20 direction.
21 So I think those of us been around for a while
22 have seen how that can change very quickly, and you can
23 go from a great market to a market where everybody is
24 trying to cover their expenses.
25 **Q. Right. Well -- and, actually, back to your**

1 **2018, you talked about the -- the temporary pause in**
2 **rental rates because of the Amazon hiring pause?**
3 A. Mm-hmm.
4 **Q. Were there any other factors, supply and demand**
5 **in the apartment? You said people --**
6 A. Yeah.
7 **Q. -- didn't want to invest until 2016, so.**
8 A. Right. Yeah. Right.
9 So, I mean, part of that was, you know, you had
10 people investing in new construction for apartment
11 buildings, which really ramped up 2013 to 2016. Those
12 buildings started coming on line in 2015 and 2016.
13 So you have -- you had the -- the pull and the
14 push of less demand on the job site but also new
15 buildings coming on line in Seattle; and, ultimately, we
16 need those new buildings.
17 But very quickly you saw that -- that rents
18 dropped because new buildings coming on, a little bit of
19 a pullback in hiring and the economic conditions have
20 just flipped the other way.
21 **Q. Right. And so -- so in your experience, where**
22 **are we in this investment -- in the real estate cycle?**
23 A. We're -- we're definitely near the peak. Peaks
24 can go on for longer than people expect, and I think
25 that's happened so far. But I think almost every real

1 estate investigator is -- is, you know, aware that
2 there's bound to be a downturn in the next few years.
3 It could be this year. It could be next year. It could
4 be two years from now. And the good ones are -- you
5 know, the people that are wise are making -- making
6 provisions for that.
7 **Q. Call it a "rainy day fund"?**
8 A. A rainy day fund or not extending themselves too
9 far.
10 **Q. Right. And so that's within the next five years**
11 **is kind of that window you are looking at?**
12 A. Absolutely. Yeah.
13 **Q. Okay. So --**
14 **HEARING EXAMINER VANCIL: Mr. Lutz, how much**
15 **longer do you anticipate Mr. Leigh being in direct?**
16 MR. LUTZ: It could be as long as a half
17 hour. Probably more like 20.
18 HEARING EXAMINER VANCIL: Okay. We were --
19 the original estimate was to be 30 total.
20 MR. LUTZ: I'm sorry. Would you prefer that
21 we continue and --
22 HEARING EXAMINER VANCIL: I'm going to look
23 at that right now.
24 MR. LUTZ: Okay.
25 HEARING EXAMINER VANCIL: Let's continue

1 'til 12:30.
2 BY MR. LUTZ:
3 **Q. Okay. So let's talk about -- and you've**
4 **summarized -- you've talked about it in general in parts**
5 **of your testimony already. But let's talk specifically**
6 **about what special benefit, if any, Harbor Steps -- you**
7 **anticipate Harbor Steps will receive by the construction**
8 **of the new LID improvements?**
9 A. I guess I would say I do like the idea of the
10 park and I'm a supporter of the park. I think it's a
11 broad benefit to the City of Seattle and everybody that
12 lives here that will visit it.
13 When I look at our specific asset, I think
14 there's not a lot of special benefit to this asset for a
15 couple reasons.
16 One, I don't think multifamily apartment
17 buildings, you know, this is going to bring in tourists
18 and visitors. And it's great for a lot of industries --
19 hotels, restaurants -- but for our biggest business,
20 multifamily apartment building, it -- as a multifamily
21 apartment building, you know, we're driven by jobs, as I
22 explained.
23 Rents don't necessarily go up because we have a
24 tourist attraction a block away. And sometimes that can
25 be an -- actually a disamenity. If there's noise. If

1 it's not well cared for.
2 So I don't see a lot of benefit on -- to our
3 rental rates from the park. You would think that our
4 retail space would -- would get more traffic from a park
5 close by there. But the nature of this park is creating
6 more connections from Pike Market down to the
7 waterfront.
8 There's the Overlook Walk, a very expensive
9 structure that's going to make it much easier for people
10 to go from Pike Place Market down to the waterfront.
11 This is actually probably going to divert
12 traffic away from our property and our retail -- our
13 retailers.
14 It's because today one of the best connections
15 is to walk down First Avenue, cut through Harbor Steps,
16 get down to the waterfront.
17 People walking from Pike Market are going to
18 have the Overlook Walk, which is going to be a much, you
19 know -- a bigger connection. A clear connection in the
20 waterfront.
21 They are going to have the Union Street
22 connection, which is going to be improved. And so I
23 think it's likely that fewer people will actually make
24 it all the way down to Harbor Steps and cut through and
25 use our retailers. So we are concerned about our retail

1 space.
2 And like I said, we don't see a lot of -- a lot
3 of benefit on the rental rate side just because of the
4 park. And there's a potential for -- that it -- that it
5 can be a nuisance if it's not well cared for.
6 **Q. Right. So if you assume it is well cared for,**
7 **you would -- you are kind of assuming net neutral for**
8 **the apartments and potential detriment to the retail?**
9 A. Yeah, I think so.
10 **Q. Okay. I might be able to -- so let's talk about**
11 **2019 again. You've already said you didn't get any**
12 **rent increase -- you are not getting rent increases**
13 **because of the parks potentially coming in 2024.**
14 **What does an assessment -- a current tax**
15 **assessment do to the value of the Harbor Steps project?**
16 A. Well, a tax -- a debt owed immediately is an
17 immediate hit to value.
18 So, you know, if -- if we have an assessment
19 coming up that's 5 million, any buyer is going to look
20 at that and say I'm going to offer you 5 million less
21 than I would because of that -- that liability coming
22 up.
23 Now, the other option is to finance the --
24 finance the assessment over, I think, a period of 18 or
25 20 years.

1 **Q. You are talking about what the -- the offer you**
2 **have from the city is to do the financing over that**
3 **period?**
4 A. Right. Right.
5 So, you know, in that case, that adds kind of an
6 additional obligation which, is an ongoing cash flow
7 agreement that we would have agreed in to with the City.
8 So any buyer would look at that as, you know, an
9 increase to property tax expenses over that time and
10 reduce the value accordingly.
11 **Q. And have you made calculations of that potential**
12 **value loss?**
13 A. Yeah. Since the financing is fairly expensive
14 in this case, it actually kind of -- if we were to
15 finance it at that rate, it would add to the -- to the
16 value -- to the reduction in value of our -- of our
17 buildings there.
18 So for Harbor Steps, that's the four parcels.
19 We kind of assumed that -- about 6.5 million, if a buyer
20 were looking at that, where we agreed in that financing,
21 about 6.5 million would be the reduction in value.
22 **Q. And how did you calculate that?**
23 A. We looked at what the cap rate is that we would
24 expect to get on a building like Harbor Steps.
25 We -- we assumed 4.4 as the cap rate on Harbor

1 Steps because it is a -- it's not a liquid asset because
2 it's such a big asset. And it is a lot of -- it's a
3 20-year-old building. It has a lot of unknown capital
4 expense.
5 It has the steps going right down through the
6 middle which is a public benefit but a -- difficult to
7 maintain and expensive.
8 So any buyer is going to look at an asset like
9 that and not pay premium cap rates that they might for
10 an asset without -- that's a lot more simpler and not as
11 complex as that.
12 **Q. And we actually kind of veered into the cap rate**
13 **discussion. So is 4.4 -- do you understand how your --**
14 **how the LID valued your --**
15 A. I understand that the -- I don't know the exact
16 number, but I saw a lot of the cap rates that I've
17 been -- discussed with other owners that -- that
18 understand how the LID was calculated was that the cap
19 rates were around 4 percent for buildings like this.
20 So I would assume if -- if Harbor Steps was
21 valued at the 4 -- at a cap rate of 4, or 4 percent,
22 that would actually take about 7.2 million off of our
23 value.
24 **Q. Okay. So at -- so you're experiencing a current**
25 **value loss because of the LID of about six-and-a-half**

1 **million --**
2 A. That's -- that's what --
3 **Q. -- by your estimate?**
4 A. -- were planning on.
5 **Q. I'm sorry. Go ahead.**
6 A. Yeah. We would estimate at 6.5 million.
7 **Q. And translated to 7.2 if you did the analysis**
8 **the way --**
9 A. If you believe the cap rate used in the study.
10 **Q. Okay. And, again, you talked a little bit about**
11 **the retail being a little bit more challenged.**
12 **If you were doing something more sophisticated**
13 **with the cap rate for the retail would be the 4.4 or**
14 **would it be --**
15 A. We typically value retail on a 5.5 cap rate, so
16 that's significantly less valuable for the -- for the
17 income and space. And that's because retail in Seattle
18 is somewhat challenged right now. Restaurants are
19 having a hard -- harder time making ends meet.
20 There's more vacancy. The landlord has to put
21 out a lot more money in terms of -- just because of the
22 market, there's a lot of retail space out there for
23 rent. So a landlord would have to put out a lot of
24 money to the tenant to build out the space. And so, you
25 know, all those factors mean that the retail is not as

1 And then he does the before without -- without the LID
2 improvements, the park. And he does it after by --
3 usually you do it a different way. It's not -- that's
4 why I thought his methodology, he didn't get comps that
5 affect the park and then solve for it.
6 He actually just took the before and said I
7 think it's a factor of X and I'm applying that to that.
8 And he relied on those park studies and stuff to get the
9 percent change.
10 **Q. Okay. So let's move to the question of special**
11 **benefit.**
12 **Can you describe now, in general terms, how the**
13 **special -- how he distinguished between -- the before**
14 **and the after to identify a special benefit?**
15 A. If he -- he established the before based on his
16 understanding of rents and expenses and capitalization
17 rate, and then he relied on a study or two about the
18 enhanced market value of properties that are close to or
19 adjacent to a park. And he used those studies to
20 determine what -- let's call it what the premium would
21 be or the factor would be.
22 So he has a before value, he -- he uses these
23 studies to determine whether it is 1, 2, 3 percent, and
24 he applies that to the before value to show what the
25 special benefit would be. What the enhanced value would

1 be.
2 When I -- when I read that, I was like, oh,
3 that's kind of -- I didn't expect that, because usually
4 I think as an appraiser, we would expect to see more of
5 a matched paired, kind of go, well, here's properties
6 that sold that were by a park and here's ones that were
7 not. Or here is the incomes on properties near parks
8 versus the income of properties not near parks to help
9 determine that delta. That's kind of what I thought I
10 was going to see. So I was a little surprised about the
11 park thing. It seemed -- seemed a little weak to me.
12 **Q. When you say "weak," can you talk about the**
13 **difference between professional judgment and -- and**
14 **judgment based on paired sales?**
15 A. Yeah, it was very -- I'll say qualitative
16 instead of quantitative. And I think as appraisers, we
17 kind of lean towards the quantitative side of things a
18 little more. I mean, we have to put in our -- a little
19 bit of judgment about quality and character of
20 locations. But I -- like I said, I thought there would
21 be an analysis of here's buildings next to parks and
22 here's their rents versus the same kind of building
23 without it and you could solve for a delta. And go, oh,
24 the rents are whatever, 2 percent higher or 3 percent
25 higher, then you could apply that. That's what I

1 thought.
2 But he used the park studies, and he's just --
3 he's kind of a little subjectiveness about how he's
4 applying the benefit of the -- of the park to the -- how
5 the buildings themselves are gonna benefit.
6 And I was -- I think I was also surprised, from
7 my understanding of it, Mr. Macaulay, he had a rendering
8 of what it -- what Alaskan Way and the park would look
9 like once it was there, but I believe when he did his
10 analysis, he didn't have the rendering of what it looked
11 like without it, if it was just the WSDOT improvements
12 and not the park.
13 So later -- when I did my work, I was able to
14 see that. And so you can kind of go, okay. So this is
15 the delta in terms of the Alaskan Way. The delta
16 between park/no park. And then you can make -- connect
17 that to what's the delta and the terms of valuation.
18 And it seemed his -- his assessment of the
19 benefit was really strong.
20 Part of it due to the before value of the
21 property being higher than it probably should be.
22 **Q. When you say "strong," you mean high?**
23 A. I mean high relative to what the delta is on
24 that park.
25 Frankly, I was a little surprised when I saw

1 factors that are just little slices of this at half a
2 percent or percent increments. And I know from reading
3 the study it was subjective.
4 It was a judgment call, and appraisers can make
5 judgment calls. That's part of our job. You know, you
6 like to back it up.
7 And maybe in something like this, with the
8 numbers being so significant, you would be a little more
9 conservative about those factors.
10 But the combination of being high in your before
11 and then applying these factors here, can I just pump
12 that -- pump that assessment up?
13 **Q. Okay. So in -- as your ultimate review, do**
14 **you -- do you believe that the Macaulay report has**
15 **accurately estimated the special benefits to the Harbor**
16 **Steps properties based on your review?**
17 A. No. No. And, in fact, you could
18 probably argument -- you could probably make the
19 argument it's not a special benefit. It truly should be
20 a general benefit, because it applies much broadly.
21 It's not -- special -- you know, in my experience,
22 usually LIDs are very, very specific to this road
23 enhancement or widening and you get better access; your
24 retail property has now got more traffic and there's
25 benefit. We're going to give you a curb cut. It's very

1 concrete. This one's not.
2 It's a little subjective. It's pretty powerful
3 when you apply -- even if you apply 2 percent or
4 2-1/2 percent to those numbers. That's really powerful,
5 mathematically, to those numbers, because the numbers
6 we're dealing with are so big.
7 So, no, I don't think that was really a special
8 benefit.
9 **Q. Okay. Can you talk about the -- your impression**
10 **of the Harbor Steps location relative to the**
11 **improvements you did talk about, the Overlake [verbatim]**
12 **Walk and the Pier 58 park stuff.**
13 A. Yes.
14 **Q. And how that play -- you know, how you would**
15 **look at Harbor Steps' location as being -- as being**
16 **potentially influenced by those -- those improvements.**
17 A. Well, it seemed to me that in the after, that
18 the -- the -- I'm looking for the right word, the sort
19 of gravity or the weight has shifted down towards Pike
20 Place Market because of the overlook improvement, very
21 significant.
22 Harbor Steps, the steps itself going -- going
23 down, you know, the buildings and you've got the steps
24 that connect to the waterfront has a lot of retail
25 around there.

1 A lot of times, I guess, more commonly they
2 would be for, like, a widening of a street, something
3 like that, you know. Maybe utility enhancement or
4 something like that, you know, where -- it's usually a
5 lot more clear about whether -- there's very clear
6 special benefit. It's usually not so -- less concrete,
7 whatever that --
8 **Q. So in this -- in the context that we're in right**
9 **now, which is the context of a Local Improvement**
10 **District, how do you define the concept of a special**
11 **benefit?**
12 A. Special benefit is something that is generally
13 pretty clear and measured -- measurable from whatever
14 the -- the improvement being done for the street. Maybe
15 its access or its visibility. Or like I said, you've
16 got a utility enhancement. It really, really clearly
17 affects that single property versus something that's
18 large and might affect all these different properties,
19 that's a general benefit.
20 And so if you are doing something large, you
21 would generally determine if there's a -- a general
22 benefit before you would determine if there's a special
23 benefit.
24 And you've got to be careful not to, like, add
25 those together. You've got to kind of keep them apart.

1 That's why for this one here, seems like it's
2 much more of a general benefit than a specific benefit.
3 **Q. And why do you say that?**
4 A. Because it's -- it's a major big project that
5 is -- that -- it benefits not only the downtown, but
6 probably benefits lower Queen Anne and Queen Anne, maybe
7 Capital Hill, all of the city of Seattle, to some
8 degree, not just these little properties.
9 So you take a property -- you know, take an
10 example that's easier. Like, it's ten blocks away from
11 the waterfront, but yet it's in the zone. Really? It
12 gets a special benefit because it's eight blocks away?
13 You know, but that's not -- in every other case it's
14 much more concrete where a parcel or building gets a
15 special benefit. This is a little less concrete.
16 **Q. So on direct we also heard you speak about the**
17 **park studies that ABS relied upon in determining the**
18 **special benefits; correct?**
19 A. Correct.
20 **Q. Did you review those -- each of those studies**
21 **personally?**
22 A. I read them.
23 **Q. And on direct you said that one thing that**
24 **surprised you about the ABS study was that there wasn't**
25 **a matched pair analysis used; is that right?**

1 A. Correct.
2 **Q. Is there a -- in your opinion, is there a**
3 **standard for margin of error in a mass appraisal**
4 **context?**
5 A. I don't know the answer to that. I've never
6 heard what that would be.
7 **Q. So your opinion in your appraisal review that**
8 **the .5 percent of 4 percent special benefits are within**
9 **typical margins of error for all commercial appraisals,**
10 **that's assuming the margin of error for commercial**
11 **appraisals; is that right?**
12 A. Yeah.
13 **Q. The 5 percent?**
14 A. Talking about standard appraisals, not mass
15 appraisals.
16 **Q. Okay.**
17 A. Yeah. With standard appraisals, I think the
18 industry agrees, if you're within 5 percent, you are
19 pretty good.
20 You know, you are 8 -- if you are 6 percent
21 apart, maybe. You know, okay. But if you are 10,
22 15 percent apart, it's like, what's wrong here, you
23 know?
24 **Q. So is it your opinion then that the percentage**
25 **increases in the ABS study are too small to represent**

1 **actual measured value increases?**
2 A. I think I said it wasn't reasonable. I mean,
3 it's so small. To me, it's like splitting hairs. I
4 mean, it's so small.
5 And -- and given that, you know, within
6 5 percent it's usually -- you know, kind of normal.
7 Boy, splitting that down to half a percent or
8 1 percent just seems like incredibly specific and like
9 how -- how did you do that?
10 Well, it wasn't a mathematically solved number.
11 It was kind of an opinion, subjective opinion.
12 **Q. And just trying to figure out, like, your sense**
13 **of the lowest percent increase in value that you would**
14 **consider to be reasonable, is that -- would that be a**
15 **1 percent increase, higher or lower than that?**
16 A. So you're asking me what's my opinion of the
17 special benefit to the Park?
18 **Q. No. So -- let's walk it back.**
19 **So you are saying in your report here that the**
20 **ABS conclusions of .5 percent being the lowest special**
21 **benefit increase that's estimated. And the 4 percent,**
22 **that range is below the 5 percent margin of error for**
23 **commercial appraisals; right?**
24 A. True.
25 **Q. So I'm trying to figure out if 5 percent -- so**

1 **presumably, if 5 percent is the margin of error, then**
2 **if -- if ABS had calculated a 5 percent increase in**
3 **value to -- for, let's say, Harbor Steps, that would be**
4 **within -- it would be above -- it would meet the margin**
5 **of error; correct?**
6 A. Yes. Mathematically, yeah.
7 **Q. Mathematically?**
8 A. Yeah. Yeah.
9 **Q. Yeah. And --**
10 A. Hence the number: Five, five, and five.
11 **Q. So my question is, is it your opinion that any**
12 **increase in value below 5 percent is just not credible?**
13 A. Well, the way you phrase it, any value, you mean
14 the special benefit bump that he's applying.
15 **Q. Right. The -- sorry. The change in value?**
16 A. Yeah.
17 **Q. Which represents the special benefit?**
18 A. Well, if he believed if he had data or something
19 that believed his matched pairs, if you would have done
20 it and it showed, yeah, it's a 6 percent delta or
21 7 percent delta, then that -- yeah, that would have
22 been -- that's a more -- that's more measurable; right?
23 You can measure that.
24 Trying to measure it down to .45 or 1 or 2, it's
25 just -- it's so small, it's hard to measure. That's

1 really -- it's just -- he can have an opinion. That's
2 his opinion. That's fine. It's just, you have to go,
3 well, you know, is that reasonable? Is that credible?
4 Because that's so minutia. It's so specific. And it
5 wasn't mathematically solved. It was just, I read these
6 studies, and they say this and that. And my opinion is
7 1 percent for this property and 2-1/2 for that property.
8 How credible is that?
9 **Q. You also mentioned on direct and in your report**
10 **that ABS -- the ABS report doesn't mention an offset for**
11 **loss in parking; is that right?**
12 A. As far as I could see, yeah.
13 **Q. And so as a result, do you believe that ABS did**
14 **not offset the loss of parking units in its assessment?**
15 A. Well, unless it was built into his judgment when
16 he picked that number, but it was not discussed. So you
17 really couldn't tell.
18 It would have been nice to kind of list out some
19 pros and cons, because actually being next to a park is
20 not all pros. And from personal experience, I lived
21 near a park. I can tell you, it's not all pros.
22 **Q. So would your opinion about the ABS report**
23 **change if ABS, in fact, did offset its calculations for**
24 **loss in parking?**
25 A. It might. I don't know. It might make it a

1 you might see specifically at the Overlook Walk or
2 certain areas of the waterfront park where there are
3 major attractions being put in.
4 **Q. Well, and for Harbor Steps we talked a little**
5 **bit about an income approach to valuation and we got**
6 **quite an education on it with the dialectic during**
7 **Mr. O'Connor's testimony.**
8 **Have you made calculations of the net value loss**
9 **to Helios associated with the imposition of the LID**
10 **benefit -- or LID tax?**
11 A. Yeah. I mean, similarly to Harbor Steps, you
12 know, when you have an outstanding payment that's due
13 immediately, and I believe the -- the assessment for
14 Helios is 2.2 million.
15 So right off the bat, our value would be
16 2.2 million less. Because any buyer would know that
17 they were going to be on the hook to make that payment.
18 So they would subtract it off any amount that they would
19 pay us for -- and if we go ahead with the financing
20 option that the City presents us, then that cost will be
21 spread out over 20 years. And that would result in, you
22 know, a buyer looking at the cash flows over time being
23 reduced by those payments, and that would be a little
24 bit more of a value hit to us. And we figured
25 2.8 million at a 4.3 cap rate for the --

1 **Q. For 18 years?**
2 A. Yeah.
3 **Q. Did you assess it based on the -- Mr. Macaulay's**
4 **cap rates?**
5 A. I -- I assessed it on a 4.0. I'm not sure if
6 that's his cap rate, but I've been given information
7 that his cap rates are lower than what we would expect.
8 And at a 4.0, it would be a 3.1 million hit to the value
9 of --
10 **Q. Okay. So you are getting --**
11 A. -- the transaction.
12 **Q. -- a $3.1 million value decrease now, and the**
13 **possibility of modest benefits --**
14 A. -- going forward.
15 **Q. -- in five years?**
16 A. That's right.
17 **Q. So how does that net out in your financial**
18 **model?**
19 A. It's --
20 **Q. Do you ever catch up?**
21 A. It's -- it's -- we would look at this and we
22 would say it's a highly, highly risky investment.
23 Because we'd incur 100 percent of the cost
24 and there's really no guarantee that we're gonna get any
25 return from that investment; or it could possibly, if

1 things don't go well, if the crime is not kept under
2 control, if that -- if it isn't very well executed, it
3 could be a negative to our business.
4 And, you know, if -- that's where you could
5 really lose your values if, you know, an area becomes
6 less desirable to live because, you know, people don't
7 want the hassle and the trouble and the noise and that
8 kind of thing, then people are going to avoid and, you
9 know, we would not be able to expect rent increases
10 there.
11 **Q. Right. Okay. And you said there's some retail**
12 **there. So, again, when you're using these cap rates,**
13 **you would -- you would actually, if you were doing a**
14 **more refined assessment, would you make some adjustments**
15 **for the retail?**
16 A. Yeah, we would. We would typically use at least
17 a 5.5 cap rate on retail, because, you know, there's a
18 good chance that when it goes vacant it will take a
19 longer time to get a new tenant in or we'll have
20 additional expenses to get the space ready for that new
21 tenant, so.
22 **Q. And if you were to do the cap rate based on your**
23 **analysis of the delay and the LID improvements for the**
24 **interim construction, how would that influence a cap**
25 **rate you'd assign in that analysis to the retail**

1 C E R T I F I C A T E

2

3

4 STATE OF WASHINGTON)
) ss.
5 COUNTY OF KITSAP)

6

7 I, CRYSTAL R. McAULIFFE, a Certified Court
8 Reporter in and for the State of Washington, do hereby
9 certify that the foregoing transcript of the proceeding
10 before the Hearing Examiner on MARCH 5, 2020, is true
11 and accurate to the best of my knowledge, skill, and
12 ability.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 23rd day of March, 2020.

15

16

17

18 _____

19 CRYSTAL R. McAULIFFE, RPR, CCR #2121

20

21

22

23

24

25

Exhibit 3

Seattle Waterfront LID Assessment Hearing

Seattle LID Public Comment Hearing

March 11, 2020

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SEATTLE WATERFRONT LID ASSESSMENT HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken at 700 Fifth Avenue

Seattle, Washington

DATE TAKEN: MARCH 11, 2020

TRANSCRIBED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

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1 benefit into those streetscape improvements. And so I
2 think that by improving other properties you're -- it's
3 a pie that you're dividing. And Helios, as well, will
4 make a slight smaller piece, I think.
5 Q. For those other properties that you're saying
6 will have increased value due to the improvements, does
7 that mean that they have sort of less room to make up as
8 far as post-completion sales and surplus?
9 A. Yes. I think any -- I believe any issue that it
10 confronts a retail tenancy or a rent generator, all
11 these things have a tendency to add up.
12 And if you're trying to make up ground on an
13 asset, it's going to be problematic. When you're
14 digging out of a hole, anything that makes that hole a
15 little bit deeper, is a problem.
16 Q. So as -- as was discussed last week, there's
17 sort of confidential spreadsheets that we won't,
18 obviously, disclose any information on.
19 But did you review those from Macaulay?
20 A. I did.
21 Q. Did you identify any -- any incorrect data,
22 again, not going into specifics from that study; and, if
23 so, how did that impact the conclusions?
24 A. I didn't find that -- it appears that
25 Mr. Macaulay has used incorrect -- incorrect unit mix

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for the apartments.

So the number of -- the number of studios, the number of one-bedrooms, the number of two-bedrooms, Mr. Macaulay appears to have used the incorrect numbers for them.

Those numbers appear to have been -- I'm not sure if those were the original. The difference between "as planned" and "as built." And so the assessor modified their data in 2017. Mr. Macaulay appears to have been using the original unit counts.

This makes a dramatic difference. Mr. Macaulay included -- he reduced the number of studios by 56. So he had a higher number of the larger higher rent units in his income calculations that made -- that, of course, makes a big difference.

The difference that that generates just by correcting his numbers is $37,849,000 on the pre-mark -- on the pre-LID value.

Q. So you're saying by -- by inserting the incorrect data into the methodology, it has artificially raised the pre-LID value of the property?

A. Yes. That's correct. By almost $38 million.

Q. In your opinion, if the correct data was used from the beginning in the methodology, how would that have impacted the pre-LID value?

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the LID improvements.

I haven't done that -- excuse me. I discussed the leasing situation and how the building is positioned relative to the LID with ownership representatives and management and -- as well as considering the effects of a LID onto the property itself; all that based in Mr. Macaulay's final study.

Q. Okay. Thank you.

I would like to begin by turning to the third page of your report. Middle of the page under "Section C: Incorrect Data."

Can you please discuss the parcel data here and your conclusions about their inconsistency with on-the-ground conditions?

A. Yeah, the -- the notation there -- this is a list of three parcels. The three parcels are what make up a sort of ground footprint of the 2+U building.

So parcels ending in -- by 190 and 210, all of those sit underneath the property, the building itself. They were purchased separately, demolished, and then constructed upon.

So the building itself sits and straddles these three parcels. The -- this is what Mr. Macaulay describes as a, quote, "larger parcel." And this should be described as an economic unit.

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1 So a value derived by capitalizing income to the
2 property would require the contribution of those land
3 parcels.
4 What it does not seem to be -- what did not seem
5 in the initial study was that the two parcels were
6 deducted from the overall value.
7 In essence, to create 100 percent of the value,
8 some of that value is contributed by the underlying
9 land.
10 What did not appear from the original study was
11 that the Freedman's Loan building and the play yard,
12 vacant lot, were deducted from the total value of the
13 property itself.
14 Upon further review of the spreadsheets that
15 were provided after the fact; that's clear.
16 Essentially, the $591 million value of -- derived from
17 the income approach by Mr. Macaulay includes the
18 contributory value of those two parcels. So they should
19 be deducted in the allocation back to the large parcel
20 ending in 0175.
21 The -- the difference that that makes is
22 relatively substantial. In a sense, what is happening
23 is the special benefit of those properties is being
24 double counted. It's assumed --
25 Q. If you wouldn't mind -- Ben, you cut out there

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1 but that may help with the system.
2 MR. SCOTT: I will try.
3 The economic unit that we've talked about,
4 what Mr. Macaulay describes as a larger parcel, is the
5 sum of the values of all the contributory parcels.
6 The special benefit should not be allocated
7 outward as -- if it could be used separately.
8 Essentially, the value of those parcels... for
9 a (indecipherable) bigger component. And so adding it,
10 essentially -- then it would just say that, well, I can
11 generate income from this building; I can generate
12 potentially separate income from these other land
13 parcels. That's not the case.
14 The land parcel is directly contributing to
15 the building on top of it. I'm sorry.
16 BY MR. STILLWELL:
17 Q. Okay. And so you're saying that, essentially,
18 it's being counted -- these two other parcels are being
19 counted twice because they are both included in the
20 value of the 2+U building and, in addition, are treated
21 as two separate parcels with potential income
22 generation?
23 A. That's correct.
24 Q. If those two parcels had been treated more
25 accurately in the report, such that their value was

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reduced from the 2+U building's value, how would that have impacted the pre-LID value and how would that have impacted the special benefit?

A. The difference would be that the total pre-LID value calculated by Mr. Macaulay and attributed to the 0175 parcel...

Q. Oh, Ben, you're gonna have to start your sentence over.

A. The pre-LID value calculated by Mr. Macaulay for the 0175 parcel, as it includes the values of the other two parcels, the application back to the 0175 parcel should have been reduced from $591,082,000, to $559,114,000.

I apologize, if we didn't do this, I think -- I'm not sure if you can see that?

HEARING EXAMINER VANCIL: Nothing is coming through. Oh, yes. Okay.

MR. SCOTT: And that -- what that hopes to show is that the 2+U building descriptor, that's the total value. If we don't -- if we don't disagree with Mr. Macaulay's calculation.

The allocation should have been back out the other two parcels. So the bottom number is what should be allocated back to the 2+U building.

The after LID, in the same manner. And the

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1 feel that's an apt comparison to the Seattle waterfront
2 project?
3 A. You know, I think the physical similarities are
4 there. You had like this double-decker freeway that
5 more or less partially fell down in '89 Loma Prieta
6 earthquake. It was triggered this kind of motion
7 towards dismantling of this whole area.
8 I think, physically, there's similarity there.
9 Obviously, the viaduct got taken down. So -- but I
10 think in terms of value impact, there is a huge
11 transformation in San Francisco immediately at the
12 location where the freeway ran, you know, physically
13 once the freeway was removed, allows the ability for
14 kind of eventual up-zoning, different change of use.
15 So you have, you know, a valuation impact if you
16 were to redevelop in that immediate area.
17 Kind of transitioning over to Seattle, I'm not
18 sure that translates the same, since a lot of the area
19 is already built out.
20 With respect to where Martin's location is, you
21 know, I don't think it changes anything. Because,
22 again, this building is relatively new. It is a 2013
23 build. Type 1 construction. We're not -- the zoning
24 doesn't change. I won't be tearing down this building
25 any time soon to rebuild something else. I think

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specific and direct, I guess, betterment is a way to put it, that benefits very clearly defined properties.

Q. And is it typical to see an LID of this size encompassing more than 6,000 properties?

A. I haven't seen one this big. But, again, as I testified previously, there's -- you know, most of the LIDs are -- well, then it just proves -- I just testified, there -- there are different magnitude-in-scale types of developments.

I've never seen one this big. I -- I think the South Lake Union Streetcar might have been -- I don't know how many, but wouldn't have been near this many. 6,000-plus is a very large scale LID project.

Q. And what does that size tell you about special benefits versus general benefits?

A. That's a good question. I think you -- you know, and -- and this is unscripted. It's -- I think given the magnitude of it, it just makes it so much more of a general benefit than a special benefit. Special benefits for LIDs and improvements are really narrow-focused.

Again, back to the -- the concept of providing the utilities is such a great example or providing a road to improved properties.

To me, I look at 6,000-some properties, and I

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1 know that some of them are multifamily condominiums.
2 And if you look at it on a building-by-building basis,
3 it would be smaller. But it is just a huge, a huge
4 scope of LID boundary area and properties involved.
5 Q. Can you give some examples of how some other
6 major projects in Seattle have been funded?
7 A. Well, sure, I think -- the question kind of
8 is -- a little bit is, is this a reasonable funding
9 mechanism for waterfront LID improvements -- or I can't
10 speak to that. I'm also not a funding consultant.
11 But, you know, even to look around at all the
12 improvements that have been made around the area -- and
13 I'm reading because I needed to take notes but, you
14 know, the viaduct itself. The viaduct and tunnel
15 replacement was funded by state, federal, and local
16 sources including the Port of Seattle and
17 (indecipherable).
18 The seawall project, a 290 million project was
19 voter-approved with a bond measure.
20 Coleman Dock -- and these sort of happen to all
21 be in the area -- comes from federal, state, and local
22 sources.
23 The Seattle Aquarium. The new aquarium will be
24 funded by city, county, state, federal, and private
25 donations.

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you to take $250,000 of your capital and move it from one investment to another that's going to receive zero interest, zero -- zero growth, and, you know -- and defer any value of that until the three to five years. If that makes sense?

Q. It does. Thank you.

And the fact that these improvements have not been built yet, the waterfront LID improvements, how does it -- how could an appraiser account for the economic value today of benefits to be received five years from now?

A. Well, the -- that's a pretty big question. The number one is, is that under -- you make the assumption that there are special benefits, and we'll just go ahead and make that assumption.

The reality of it is, is that it would be discounted in some form. I mean, there's so many factors that you have to look at when determining the value of a property before and after. Over that five-year term, that's almost impossible to figure out what it is.

And I could go over our latest, you know, health situation of the Coronavirus is one example of here's a change that I don't think anybody saw coming, but this could impact values.

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Q. And so there are these -- you said these other factors that might impact values between now and then that we really don't know about.

Could you talk a little bit about those factors?

A. Well, it's -- you know, the basic economics of supply and demand. But it is very economic driven. Jobs driven. I mean, I'm not an economist. But you can just see the factors. We've been in a very growth economy and there's a lot of individuals that are projecting or pontificating some form of a recession.

So there's just all these real estate cycles that you end up -- property owners go through. So it's almost more that than it is anything that is specific.

We're not even talking about the disruption of construction of the project over the duration. That is another element you could look at. There's a lot of different factors that go in and try to figure out something five years from now. It's -- it isn't unusual to do that.

Q. You mentioned construction.

To your knowledge, and based on your review, did Mr. Macaulay take into account any risks that there would be delays in constructions, that there would be delays in obtaining permits, that the times might change?

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A. You know, I went over the report again today just to see what -- about the eighth time going through it and I saw nothing about that.

Q. Based on your review, did Mr. Macaulay take into account the risk that there be negative impacts due to the improvements on certain properties; such as, loss of parking, loss of use, increased traffic?

A. He made a note, and if I recall, in there about a loss of parking, but that being offset by a benefit of -- of the project, an LID improvement project.

(Indecipherable) but I apologize. I know of -- (indecipherable) --

HEARING EXAMINER VANCIL: Mr. Shorett --

MR. SHORETT: And the 57 --

HEARING EXAMINER VANCIL: Mr. Shorett.

MR. SHORETT: Working -- and -- the -- the 54 -- that whole line appears, they all appear not working.

So, you know, what the impacts are going to be, I don't think anybody really knows. But we know that there's a loss of parking, and we know they are concerned about it.

HEARING EXAMINER VANCIL: Mr. Shorett, could I please ask that as you're given testimony you keep your eyes on the screen. If I'm raising my hand, I

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level of certainty.

Q. And so you're saying that -- that actual measurable special benefits at that -- between this hypothetical before condition and hypothetical after condition, that that -- that that is basically unsupported in -- in the final special benefit study; is that your testimony?

MS. THOMPSON: Objection. Leading.

HEARING EXAMINER VANCIL: Response to the objection?

MS. LIN: I was just trying to summarize. But I can rephrase.

HEARING EXAMINER VANCIL: Okay.

BY MS. LIN:

Q. What is your opinion about whether the special benefits study supports its estimation of actual measurable special benefits?

A. I -- I think the best answer -- and it's -- I testified to this before. It's in my Exhibit 1. I think it's in the supplement that we're going to talk about later.

It is so remote and speculative to determine what the value benefit is for these just very incremental LID improvements are to surrounding properties five years out that it just leads to a report

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that's misleading and is not credible. It's just too remote and speculative.

Q. Let's take hotels as an example.

If the improvements are delivered five years from now, what do the hotels -- what benefit do the hotels receive right now?

Is it higher room rates? What benefit are they seeing right now?

A. Nothing. Zero.

Q. And so what's the affect of imposing the special benefit assessment right now on those hotels given that the improvements aren't coming until 2024?

A. We've talked about this already. It's a loss in value to the property until those improvements are completed. And assuming there's special benefit beyond that, and if there is, then at least they receive it then.

But this is -- and, again, I'm not -- I'm not legal and I can't talk about the -- all of these aspects of realities is something that should be assessed when the project is completed, not today. Because it negatively impacts every property who's received and use this benefit.

MS. LIN: All right. Let's turn to -- let's turn to your supplement.

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matched-pair analysis on any of the properties you reviewed?

A. No, not that I'm aware of. There's a reference -- a couple of references in some of them that say "matched pair," but there's no empirical data presented. So I'm not quite sure what they meant by that.

Q. But the final study does offer some case studies.

Are these case studies -- and these are comparable parks.

Are these case studies an adequate substitute for matched-pair analysis?

A. I will say that it's fair to bring in case studies if they are relevant.

But in this instance, as I testified previously, I don't believe that these are relevant case studies.

Q. And why is that?

A. Well, just in simple terms, as I testified to before. The scale of the projects, renovations or permit projects are so substantively different than the difference in the value of the property before the LID improvements and after the LID improvements. Their scale is huge.

It's -- we can go through each of these. But

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do you offer to --

MS. LIN: My response is that I am asking if it's possible to -- to tease out a difference in -- the reason for the increase in property value over the course of five years, given a hypothetical situation that the property values do increase.

I think there's really -- I think that's fair game. I also don't think there's a way to ask that in a way that would appease opposing counsel.

So I think -- was your objection is that it's leading?

MS. THOMPSON: Yes.

HEARING EXAMINER VANCIL: Yes.

MS. LIN: Oh, okay. And I guess, I -- I think the response could very clearly be yes or no to that question. And he certainly could say, yes, it is possible to tease out the reason for the property value increase over the course of five years.

HEARING EXAMINER VANCIL: Overruled.

MS. LIN: Okay. Thank you.

BY MS. LIN:

Q. You can go ahead and answer.

A. You want me to answer that question?

Q. Yes.

A. I think it's very difficult to -- I testified

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before and I'm going to continue to testify on this.

I just think it's very difficult to establish such -- such narrow increases and small increases in property values that were performed in the ABS appraisal.

But, you know, it's -- again, it's remote speculative. It's difficult to do. It's within the error of rounding. I -- I think you're asking -- I look at the appraisal and go, this is a big task to try to figure out if there's actually value increases from the LID improvements five years from now.

Q. Let's turn to page 4 of your supplement.

And you begin a discussion about the Rose Kennedy Greenway in Boston.

Can you describe the before and after conditions in this area of Boston?

A. Yes. Well, this is part of the infamous big gate which is where they put their... in...

Q. Can you please repeat that? Starting from "infamous."

A. Okay. This is part of the infamous big, big project where they moved the interstate, elevated interstate underground and into the tunnel very similar to what Seattle did with the 99 Tunnel. And that left an open streetscape, a very substantial open streetscape

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceeding before the Hearing Examiner on MARCH 11, 2020, is true and accurate to the best of my knowledge, skill, and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of March, 2020.

Crystal McAuliffe

CRYSTAL R. McAULIFFE, RPR, CCR #2121

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Exhibit 4

Seattle Waterfront LID Assessment Hearing

Seattle LID Public Comment Hearing

March 12, 2020

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SEATTLE WATERFRONT LID ASSESSMENT HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken at 700 Fifth Avenue

Seattle, Washington

DATE TAKEN: MARCH 12, 2020

TRANSCRIBED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

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MARCH 12, 2020

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PETER K. SHORETT, witness herein, having previously sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LIN:

Q. Okay. Mr. Shorett, I'm going to turn to Exhibit 49, which is your supplement to the appraisal reviews.

A. All right. Give me a minute, if I may?

Q. Sure.

A. I have it. It's right here. Yes.

Q. Okay. And I think it goes without saying, but did you prepare this report?

A. Yes, I did.

Q. Did you work with anyone else on this report?

A. No, not that I know of. No, just myself.

Q. And can you turn to page 3, please?

A. All right.

Q. So under the heading "Case Studies," it says, "None of the case studies offer comparison discussion or provide analysis specific to the value of high-end residential condominium units or, for that matter, hotel properties along with most of the other property types within the LID boundary area. They simply fail to provide the necessary support for the increase in value

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for a nominal change in condition from the LID improvement."

Did you write that?

A. I did, yes.

Q. And do you -- is that your -- is that consistent with your testimony here?

A. Yes.

Q. And can you please turn to page 13 of that same exhibit?

A. Yes.

Q. The last sentence says, "Further, the relevance and use of the economic studies is anecdotal at best and are not properly used."

Is that consistent with your test- -- did you write that?

A. Yes, I did.

Q. And is that consistent with your testimony here?

A. Yes.

Q. And then turning to Exhibit 48, which is Exhibit 1. You don't really need to have it in front of you. I'm just going to ask you.

Did you prepare this Exhibit 1 to your appraisal review?

A. Yes, I did.

Q. Did anyone else work with you on it?

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that the confidentiality concerns in this case don't run just one way.

Mr. Macaulay has his own concerns about confidentiality concerning his work product as you're aware many of the experts that are being used to critique his study are also his competitors.

And so the fact that we don't have a hotel property at issue here, isn't -- in our opinion the crux of the issue.

Secondly, my understanding of what's going to happen if we proceed right now is that Mr. Shorett will be reviewing or looking at the spreadsheet and testifying about them. That is not a demonstrative exhibit. That is testimony that is going to be part of the evidentiary record.

What I would suggest --

MS. LIN: Well, (indecipherable).

MS. THOMPSON: What I would suggest is that we take a break and counsel can confer about this so that we're all on the same page so that we have a workable way to do this going forward.

MS. LIN: I actually would like a ruling -- or some clarification at least from you on the method -- Mr. Macaulay's methodology. And it sounds like what you're saying is that the actual formula -- so not

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in -- I had the page number out -- in the LID actual final assessment roll. I believe his exact words are "redevelopment." So that's where that would apply.

Q. And then it looks like on Row 18, he then applies a $25 per square feet increase to the land value and that that is the special benefit amount to this property. Is that -- is that your understanding?

A. Yes.

Q. And from your review of the final -- final study and this underlying spreadsheet, what is the basis for this $25 increase to the land value?

A. Well, this goes back to all the previous testimony. It's his -- it's his interpretation of the data, which I believe is an inappropriate interpretation, that the value of this property would increase by $25, which I believe is 1-1/2 percent. I would have to do the math to check.

About one point -- it's about 1.5 percent. And I don't know what the basis for that opinion is other than what's contained in this report that I've already critiqued.

Q. So is this specific increase in value on this property supported by any evidence in the final study?

A. I've testified to all of the elements that I believe are the basis for his opinion of increases in

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value so far and I haven't found them to be credible.

Q. Is 1.5 percent, in your opinion, within the margin of error for appraisals?

A. Absolutely, 100 percent, yes.

Q. Do you -- did you have occasion to review any of Mr. Macaulay's methods on other buildings owned by -- buildings owned by nonprofits?

A. No. I'm not sure I understand the question.

Q. Well, United Way is a nonprofit organization.

So I'm just wondering if you had occasion to review any other properties where the taxpayer was a nonprofit organization?

A. Not for the purposes of this.

And it really shouldn't matter, because we're dealing with the fee simple interest and the definition is willing buyer or willing seller definition of RV value is willing buyer/willing seller.

So the fact that it's a nonprofit doesn't have much to do with the value of the property.

Q. Well, talking about the proportionality a little bit.

Would the fact that this is a nonprofit matter for the purposes of a proportionality analysis?

A. I'm not sure I understand that question either. I'm sorry.

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his case comes up, I did talk to him about -- about his application of it and his experience and knowledge about Crompton and Mr. Crompton.

So the answer is yes, I relied on that spreadsheet. But again, I reviewed it and accepted it.

Q. So in preparing the supplement, is it fair to say that you reviewed the case study websites as well as the Crompton reports and information provided by Mr. Moses; is that right?

A. Yes, that's correct.

Q. Was there any other information that you used to prepare this supplement?

A. No. I mean, we talked -- the SHRA economic study that I reference in there that I put some verbiage in there. That's on page 11, excuse me. That's -- there's some embellishment on the narrative that was in the ABS report in some commentary.

MS. THOMPSON: Thank you. No further questions.

HEARING EXAMINER VANCIL: Redirect?

MS. LIN: Sure.

REDIRECT EXAMINATION

BY MS. LIN:

Q. You testified regarding whether it is impossible to perform a special benefit analysis due to the size of

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the LID, the number of properties, and the fact that these improvements are not constructed yet. And I just want to clarify.

Is it your testimony that it's impossible to do at all or that it's impossible to do with the level of precision implied in the final study?

A. It's impossible to do in the level of precision implied in the study. Without -- especially without the appropriate disclosures of the use of the hypothetical conditions.

HEARING EXAMINER VANCIL: Do you have additional questions on redirect?

MS. LIN: I do have a few.

HEARING EXAMINER VANCIL: Okay. You drifted that way. Could you come more this way, if you can?

MR. SHORETT: Actually, she's fine. I've got her in the screen.

HEARING EXAMINER VANCIL: Okay. Thank you.

BY MS. LIN:

Q. Did you -- did you see any matched-pair analysis in Mr. Macaulay's final study?

A. No.

Q. So you haven't had the occasion to review any final study that incorporates matched-pair analysis; is that correct?

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are not given to anybody except the manager of the hotel.

Q. So without information from the hotel management and without the STAR Reports, is it possible to come up with an accurate room -- average room rate and occupancy rate from a particular hotel?

A. No.

Q. Do you know whether Mr. Macaulay had access to hotel management input or the STAR Reports?

A. I -- I don't know if he did. But none of the managers that I spoke with indicated that they had shared the STAR Reports with him. And his report does not cite information from STAR Reports.

Q. Does the fact that Mr. Macaulay did not have input from the hotel management and did not have STAR Reports affect the liability of his pre-LID valuation of the hotels?

A. In my opinion, it reduces the reliability of it.

Q. I'm going to read one more -- a couple more sentences from the final benefit study, and hopefully you'll just be able to respond without it -- without it to look at. And if you're having trouble, we can -- we can move on.

A. Okay.

Q. So we're going to go to Exhibit 3. And I'm

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Q. Okay. So those --
A. The percentages -- the percentages at the bottom of the table are the percentage increase in net operating income in value.
Q. Understood.
But let's actually walk through the top part first, if you don't mind?
A. Okay.
Q. Okay. So just going through that .15 percent and then .45 percent. So it's .15 on the low end and .45 on the high end. And that's the percentage increase -- that's the expected percentage increase to the room rates due to the LID. Is that -- is that how you read this?
A. Yes. That's correct.
Q. Okay. Do you know what the basis is for these two numbers? What the basis is for con- -- for estimating that the room rates might increase by .15 percent up to .45 percent?
A. I -- I do not.
Q. We talked a little bit about increase in tourism as being the basis for Mr. Macaulay's conclusion that property -- that property values and presumably room rates could increase.
In your experience appraising hotels, how much

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But they do go into the -- they are all part of the package.

The proximity of the hotel to where a person is working or -- the reason why they came to the area is important as well because it might mean that you don't need a car. If -- if you can fly in or -- or ride the train and the bus and end up in your hotel, and then be able to walk to the business that you are visiting and not have to rent a car and pay for parking, that's certainly a -- a benefit. And that could be reflected in people's willingness to pay a higher room rate.

Q. Do you know -- these percentages are applied to the before room rate; is that correct?

A. Yes, that's how I interpret that -- the spreadsheet.

Q. Do you know how Mr. Macaulay came up with the before room rates?

A. I do not.

Q. Do you know if -- if he used actual room rates from the hotels?

A. The room rate that he has is significantly different from the actual room rate that we were -- we were provided with STAR Reports, so we see the actual room rates.

And the room rates that he used in this -- in

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this case was significantly different than what they are actually achieving.

Q. And how was it different? Was it higher or lower?

A. His room rate was higher.

Q. If you use a higher room rate, are you going to end up with a higher revenue number?

A. Yes. Well, all things being equal. If nothing else changes, yes.

Q. And, in fact, did Mr. Macaulay end up with the higher revenue numbers than what you have seen as any actual revenue numbers?

A. In most cases, yes, he did.

Q. Did he give us kind of a range, like percentage?

A. Um...

Q. It's okay.

A. No, not really.

Q. Okay. That's all right.

A. They vary case by case.

Q. And it looks like he applied this percentage increase, this .15 to .45 percentage increase to room rates and then he applied that same percentage to food and beverage revenue; is that correct?

A. That's what he did.

Q. And then he applied that same percentage to

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Q. And so those differences in cap rate from the before are -- from 7.5 to 7.44, that's a .06 difference. And then --

A. Yes.

Q. From 7.5 and 7.48, that's a .02 percent difference.

A. Yes.

Q. Do you know what the basis is for -- for him changing those cap rates?

A. No.

Q. Is your -- is it your opinion that a .02 percent difference in cap rate is a measurable difference in the market?

A. No. To my mind, it would not be. I could see doing this as sort of an exercise to see what the impact would be if we shaved rates. But it's very unusual -- at least in my experience, it's very unusual for a cap rate to -- to -- usually we're looking at quarter point ranges. So you might say 7 percent or 7-1/4 or 7-1/2 percent. You wouldn't say 7.002 or some, you know, ridiculous tiny little -- little shaving of cap rates.

So other than this being a mathematical exercise, I'm not sure what the point is. And I don't see any -- I can't imagine any support for shaving a cap rate by that very narrow margin and -- and trying to

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maintain that it's accurate.
Q. And, again, this scenario also builds on information from the before scenario, and that information does not come from hotel management; is that correct?
A. That is correct.
Q. So now let's go down to the special benefits summary at the bottom.
A. Yes.
Q. Okay.
A. Bottom left.
Q. And can you explain what he does in his special benefit summary?
A. Well, he -- he's basically showing the sensitivity of his analysis and listing out all of the -- all of the results. What values does he come up with under these different assumptions?
Q. And that's scenario A-1, A-2, B-1, and B-2?
A. Right. Those numbers are just taken from the center and right-hand sections of the spreadsheet. They are just copied down.
The top line under the "special benefits" section is taken from the left-hand side of the spreadsheet. That's his estimate of what's the value today. The value without the LID improvement.

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1 takes an average of those percentages, and that average
2 is .54. But he doesn't actually use that average. He
3 ends up using the number .50. And so --
4 A. It may be -- it may be what he's doing is
5 rounding off the percentage rather than rounding off the
6 dollar value.
7 That -- that way we can at least follow it.
8 So he's saying his four scenarios, on average,
9 suggested LID -- LID lift of -- an LID lift of
10 0.54 percent. We're gonna round that off to half a
11 percent. And then we're going to apply that to the
12 before value to end up with the after value. And then
13 we're gonna round that off, so if -- if there is a
14 logical consistency there. But it's all founded on an
15 income forecast that has no support.
16 Q. And did he generally use this approach with each
17 of the hotels?
18 A. Yes.
19 Q. This -- these four scenarios and two of them
20 being increasing the room rates and revenue by a certain
21 percentage while holding cap rate constant, and the last
22 two scenarios being -- holding the revenue constant
23 while varying the capitalization rate.
24 A. That's correct.
25 Q. Okay. Based on this method of pulling this

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before information from non-STAR Reports by hotel management, so presumably other sources, and then applying these percentages or cap rate increases, do you think this method yielded a reliable measure of special benefits to the hotels you analyzed?

A. No.

Q. And why is that?

A. No. Because -- well, appraisers have -- and it is not just appraisers. Appraisers and accountants, I think as well, have a common expression of garbage in/garbage out.

If you don't start out with a good basis for your income forecast, you cannot possibly come up with a reliable value conclusion.

MS. LIN: I think I'm done with the direct for the general -- for all of the properties, and we can turn to specific properties.

But it might be an opportunity now to take a break, if you wanted?

HEARING EXAMINER VANCIL: How long will your -- we can -- how long will the individual properties take?

MS. LIN: Well, we're about to start a large -- the Hedreen parcels. So they are all the high parcels; there's seven of them.

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It's really -- that's really more semantics.

Q. And is it your --

A. If I could, I would like to call your attention to one quick column on this page.

But the right-hand column in Table 1. The top line for each hotel is the rack rates of that hotel. That's the range in advertised rates that's available -- that's information that's available publically. Well, actually everything else on the page is available publicly.

And that shows the difficulty that Macaulay may have faced in trying to come up with the achieved average rate at the hotel when the range in rack rate is so wide.

In the case of the Renaissance, it goes from $159 a night to $300 a night. And if you thought that $300 was what everybody was paying, you would be ignoring the fact that in the off season they -- they charge less. They offer at more discounts.

So that's -- I think it's important to distinguish the rack rates on this table from the actual achieved average room rates.

Q. And just to round that out, the rack rates, how do those -- are they higher or lower than actual rates, generally?

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MR. GORDON: Correct.

HEARING EXAMINER VANCIL: Okay. Thank you.

MR. GORDON: That's correct.

BY MS. LIN:

Q. Can individuals other than hotel managers either purchase or gain access to STAR Reports?

A. Yes and no. You cannot buy an individual STAR Report that would show individual property data.

You can buy what STR Global refers to as a custom Trend® report, or hotel Trend® report. They allow anybody with 550 bucks to order a report that will give you a six-year monthly history of performance for a group of hotels.

Now, they limit the groups. You have to have at least four hotels. They can't all be the same owner. They can't all be the same brand. So there's some limitations.

But by and large, if you wanted to find out how the competitive market was doing for the Renaissance Hotel, you could pick a group of six or eight hotels that you felt were similar to the Renaissance, order a Trend® report and see how that group is performing monthly.

And if you happen to pick the same hotels that were in the competitive set as the Renaissance, you

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1 would get the same numbers that show up in the STAR
2 Report as the results of the competitors.
3 Q. And would that information in that type of STAR
4 Report be more reliable than the rack rates?
5 A. Enormously. That -- I do that. If I don't have
6 access to individual STAR Reports, I almost invariably
7 order an STR Trend® report to go with it.
8 It's -- it's just so critical to -- to hotel
9 analysis to know how the market is doing, that you
10 really got those two sources; the STAR Reports that
11 management can give you if they chose, or an STR report
12 that you can purchase.
13 It's all the same -- it's all the same data.
14 Q. Turning back to Table 1.
15 Is there anything else you would like to
16 highlight on Table 1?
17 A. It's all pretty basic. This is -- the sources
18 are a mix of county records about square footages and --
19 and -- and when the buildings were built.
20 The AAA tour book shows you information about
21 what -- what amenities are in the hotel. And if they
22 are not listed in AAA, then you just go to their website
23 and you can read about the hotels.
24 The county will tell you how tall the hotel is;
25 how many stories. This isn't really rocket science.

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be the same person, but it might not.

And if you're trying to come up with an estimate of market value before the improvements, the before situation in market value, then the improvements aren't there. There's no benefit if -- assuming that there is a benefit to them, it hasn't happened yet. And yet, the owner of the hotel may be receiving a bill for the cost. So that would reduce the current value of the hotel because it's adding a liability. The same as if you increase the property taxes.

Q. And, in your experience, have any hotels been able to immediately increase room rates due to the anticipated improvements?

A. I've never heard of that happening.

Q. And, in your experience, have any of the hotels experienced an increase in occupancy due to the anticipated improvements?

A. No. To -- to the LID improvements you are referring to --

Q. Correct. Correct?

A. -- to these improvements?

Q. Yeah.

A. My answer is no. No.

Q. Okay. Is there anything --

Actually, going back to the market room rates on

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reached a number close to Mr. Macaulay's estimate?
A. No. I mean -- or -- I guess that I'm not sure I understand the question.
Q. I think you did.
Yeah. Would you like me to explain my question?
A. Well, if you want. Sure.
Q. Go ahead. Why don't you -- why don't you explain.
A. If -- if he had access to the STAR numbers -- if he purchased a STAR Report and somehow had defined which hotels were most competitive with the Renaissance and agreed with management on that decision, he would have had access to all the market numbers.
And if he -- if he was doing this for a number of different hotels and perhaps had purchased several STAR sets, several STR Trend® reports, he would have realized that the variation in occupancy is pretty narrow downtown.
And that's because the seasonality and the distribution. The hotels run half empty on Sundays throughout the year. Doesn't matter. Sunday nights are lousy. And there is a seasonality where it is high in the summer and not as high in the winter.
But all the hotels are running such high occupancy or have been up until -- up until this year

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceeding before the Hearing Examiner on MARCH 12, 2020, is true and accurate to the best of my knowledge, skill, and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of April, 2020.

Crystal McAuliffe

CRYSTAL R. McAULIFFE, RPR, CCR #2121

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Exhibit 5

BEFORE THE HEARING EXAMINER OF THE CITY OF SEATTLE

In re Proposed Final Assessment Roll for Local Improvement District No. 6751 ("Waterfront LID")	Case Nos. CWF-0318, et al.
Parcel Nos: 6094670010; 6094670020; 6094670030; 6094680050; 0660000740; 0660000708; 2285130010; 6792120010; 6195000030; 0942000430; 6792120020; 7683890010; 1976200070; 1976200075; 1976200076; 7666202465; 7666202345; 1975700365; 0696000015; 1974700175; 1117080020; 1975700235; 0696000055; 0660000540; 0660000545; 066000-0575; 2538831460; 2438831480; 0939000240; 1974600025; 1974600035	

PORTIONS OF THIS TRANSCRIPT DESIGNATED CONFIDENTIAL

(Page 123-168, Page 206-22)

DEPOSITION UPON ORAL EXAMINATION OF

ROBERT J. MACAULAY, MAI

10:04 a.m.; February 27, 2020

10885 NW Fourth Street

Bellevue, Washington

REPORTED BY: Margaret Walkky, CCR, RPR, RMR, CRR

Court Reporter, License No. 2540

1 A P P E A R A N C E S

2

3 FOR CWF 0318, 0410, 0411, 0412, 0413, 0414, 0415,
4 0416, 0417, 0418, 0420, 0421, 0422, 0423, 0425, 0426,
5 0427, 0429, 0430, 0431, 0432, 0433, 0434, 0435, 0436,
6 0437, 0438, 0439, 0440, 0441:
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8 MEGAN LIN
9 Perkins Coie
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16 FOR CWF 336, 337, 339, 340, 342:
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18 Yarmuth
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21 206-516-3800
22 mterwilliger@yarmuth.com
23
24
25

1 A P P E A R A N C E S

2

3 FOR City of Seattle and witness:

4 MARK S. FILIPINI

5 K&L Gates

6 925 Fourth Ave, Ste 2900

7 Seattle, Washington 98104

8 206-623-7580

9 mark.filipini@klgates.com

10

11 FOR Hotel Monaco (133), Hotel Vintage (134), Thompson

12 Hotel and Sequel Apartments (168), Hotel Vintage

13 (134), 818 Stewart (218), Westlake Center (135), 1918

14 8th Avenue (219), Edgewater Hotel (136), 1800 9th

15 Avenue (220), Pioneer Square Hotel (333), Hilton

16 Hotel (353):

17 TODD REUTER (By phone)

18 Foster Garvey

19 618 West Riverside Ave, Ste 300

20 Spokane, Washington 99201

21 509-777-1604

22 todd.reuter@foster.com

23

24 ALSO PRESENT: Victor Moses, CWF 0375

25 Gene Burrus (By phone)

I N D E X

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By Ms. Lin	42, 73, 112, 142, 157,	169
By Ms. Terwilliger	37,	183
By Mr. Reuter	39, 80,	197
By Mr. Moses	15, 74, 142, 180,	230

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3	Email to Pearce and others from Curtis, 8-22-18	99
4	Spreadsheet, LID-funded element	106
5	PowerPoint: Beyond Real Estate Increment: The Value of the Central Seattle Waterfront, February 2019	132
6	RCW 35.43.050	236

1 ROBERT J. MACAULAY, MAI, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:
5
6 (Exhibit-1 marked.)
7
8 E X A M I N A T I O N
9 BY MR. LUTZ:
10 Q. Mr. Macaulay, my name is Jerry Lutz.
11 I'm representing a number of -- at Perkins
12 representing a number of the LID assessment
13 appellants.
14 Could you identify the document that's
15 in front of you?
16 A. Yes. This the Summary of the Final
17 Special Benefits/Proportionate Assessment Study we
18 did.
19 Q. Okay. I think the last time I met you
20 was in connection with the proposed Northeast 4th
21 Bellevue LID extension which failed.
22 A. Uh-huh.
23 Q. How many LIDs have you worked on over
24 the course of your career?
25 A. Over a hundred.

1 let me rephrase that.
2 We used the studies as an outline to
3 form our opinion as to whether or not these
4 improvements that were being done that I discussed
5 would have any market influence, positive market
6 influence, and we found that they do. So they were
7 used as background influence to form an opinion as to
8 how far that measurable market value difference would
9 occur.
10 Q. Okay and --
11 A. In the Seattle market also, I'm sorry.
12 Q. In the Seattle market, via proximity to
13 the different components of the Seattle waterfront
14 project?
15 A. As was defined in the feasibility
16 study, yes.
17 Q. Right. So what was your definition of
18 too small to measure?
19 A. A lot of times when you're doing
20 boundary issues, you're looking at geographic area,
21 change in neighborhoods and things of that nature.
22 And as you got out to a point of, you know, less than
23 a quarter of a percent, 10 percent, that area, it
24 just was so small, and when you hit certain areas
25 like Denny Way you go into a different market, I-5

1 MR. FILIPINI: Object to the form.
2 Q. You can still answer.
3 A. There were no similar park projects
4 like this in the Seattle area where we could really
5 draw before and after distinctions between them, so
6 we went outside to other cities that had similar
7 elements and primarily used those.
8 Q. Right. So when you use the words
9 "measurable benefit," it is an estimate based on the
10 data from and information from other city parks?
11 A. It's our judgment call of the
12 measurable market value difference before and after
13 the elements of the LID.
14 Q. So your judgment call in your estimate?
15 MR. FILIPINI: Object to the form.
16 A. That's what we're hired to do, is make
17 an estimate of the market value difference in the
18 property before and after the LID, correct.
19 Q. I want to shift gears for a minute. I
20 want to talk about before and after, but I want to
21 start with a discussion of hypothetical conditions.
22 So can you talk about what a
23 hypothetical condition is in an appraisal?
24 A. I would have to look up the specific
25 definition, but there's hypothetical and

1 A. Well, you have to talk to the city as
2 far as what actually they will be doing. It's
3 outlined in there. As far as the market is
4 concerned, we looked at Portland and at Boston and at
5 some of the other areas that had park elements,
6 maintenance, maintenance and loitering and upkeep
7 were big factors.
8 So from discussions with the city, the
9 maintenance agreement that was signed with the other
10 property owners, that was consideration in the sense
11 that it would be an enhancement to that area, versus
12 a transportation corridor and a benefit to the area
13 and the market.
14 Q. Just to ask it in a pointed way, are
15 you making the hypothetical assumption that if it
16 becomes regulated as a park, homelessness becomes no
17 longer a problem?
18 MR. FILIPINI: Objection to form.
19 A. It would allow the city more authority
20 to police the area than it would versus the
21 transportation corridor. Whether it would solve the
22 homeless problem, I can't speak to that. I don't
23 know.
24 Q. Well, again, when you're describing the
25 difference between a fair condition park and an

Q. So do you have a sense in the before how much the market value of the 6,000 assessed properties increased as a result of the viaduct and the standard road improvements?

A. It wasn't the scope of our assignment. The scope of our assignment was to assume the viaduct is removed, and if the road improvements are in place, the sea wall is gone, what is the market property of the value under those conditions. That defined our before condition.

(Discussion off the record.)

Q. I'm still just focusing on this issue. You would agree I assume that there is a component of value in your analysis of the base value of at least some of the assessed properties attributable to removal of the viaduct and the base improvements; is that correct?

MR. FILIPINI: Object to the form.

A. There would -- all of the before values would assume that. It would assume the viaduct is gone, it would assume the road improvements are in place.

Q. And there's some element of value attributable to that condition, you got better view?

A. Certainly, that is what the market

1 would be under that scenario, yes.
2 Q. Do you have any sense of what the
3 magnitude of that market increase is, like 4 percent,
4 3 percent?
5 A. We didn't -- that wasn't part of the
6 scope of our assignment to consider that. We assumed
7 that the viaduct was gone. So we weren't measuring,
8 you know -- it was just assuming that, and what would
9 the market changes of it be under that condition.
10 Q. Right, so how do you do that if you
11 don't have a way to make an estimate? I mean, what
12 was your estimate based on? It was based on the
13 market you got from what, CBRE?
14 MR. FILIPINI: Object to the form.
15 A. We had CBRE, we had Kidder Mathews
16 data, we had CoStar data, a number of different data.
17 So you would, like any appraisal, you would estimate
18 the value of the property assuming the viaduct is
19 gone. So they would have an enhanced view amenity
20 along the waterfront, and moving back further, there
21 would be obviously changes in the market depending on
22 where the property is located. Each property is
23 looked at individually under that assumption.
24 Q. Let me ask the question a different way
25 more specifically.

1 percent?
2 A. It's unreasonable to assume that the
3 measurable market value difference from the before
4 and after conditions of the Seattle waterfront
5 project would be above 10 percent because we weren't
6 considering the impact of the view amenity in our LID
7 analysis.
8 Q. All right. That was an adjustment
9 from, if you had included it, you would have been
10 able to assume up to 20 percent?
11 MR. FILIPINI: Object to form.
12 A. Yeah, but I don't have a specific
13 figure, but if we would have -- if the viaduct would
14 have been included, if the viaduct element of the LID
15 would have been included in our analysis, the special
16 benefit estimates would have been at least I would
17 assume significantly higher than 10 percent or what
18 we ended up estimating during our before study.
19 THE REPORTER: "During our before
20 study," is that what you said?
21 THE WITNESS: The --
22 THE REPORTER: Just, is that what you
23 said?
24 THE WITNESS: Could you repeat what I
25 said?

(Record read as requested.)

THE WITNESS: Let me rephrase that.

That the difference in market value if the viaduct would have been included in our analysis would have been significantly higher than the benefit estimates that we found in our final special benefit study report.

THE REPORTER: Thank you.

Q. So can you explain how the before value factors into the determination of an assessment?

A. It just establishes a moment in time, as of October 1, what the market value of that property is, based on in this case specific assumptions.

Q. Right. So the hypothetical assumption that the viaduct is down and the improvements are in place has an estimatable market value contribution to each of the parcels?

A. There's an estimated --

MR. FILIPINI: Object to the form.

A. There's an estimated market value for each property based on that hypothetical condition.

Q. Is there a place in your study where we can find that estimated hypothetical market impact in the before?

A. Just look at the spreadsheet. We have a market value estimate for each property in the before condition.

Q. So we should probably pull out the spreadsheets and you can just show us how that component is addressed in there.

A. It's just a line item estimating market value in the before and then that's what our conclusions were.

Q. Right. I'm just trying to tease out the specific hypothetical component, and maybe it's not shown separately.

A. I guess I'm not following you.

Q. Well, if you're assuming, for example, that road improvements are there, if you're assuming the viaduct is gone and you're saying that is the before value, but it is hypothetical, is there any identification of the component of that valuation that is hypothetical or do you just say it's my hypothetical valuation?

A. It's just my hypothetical valuation.

Q. The value is higher because the viaduct is gone than it would be without the viaduct gone, and the value is higher with road improvements in than it would be without road improvements in?

A. Again, the market value in the before is the market value, before what we estimated based on those specific assumptions.

Q. The market value in the before is your estimate of its value under that hypothetical scenario?

A. Correct.

Q. All right. Maybe I'll let these guys ask burning questions before break for lunch. I have one last burning question.

On page 27 here before we break for lunch --

MR. FILIPINI: 27 before --

Q. No, I'm sorry, let's stay right where we were actually on that page. We were at page 8, I'm sorry.

Going on to page 7, when you report the high and low values, I understood that special purpose properties were assessed differently, but I don't understand the .10 percent as the high and 1 percent as the low.

A. Yeah, that was a typo. They should be reversed.

Q. Thank you.

A. That was just a mistake.

1 So your report is that currently the
2 design process for the promenade portion of the
3 improvements is 100 percent complete?
4 A. That's what this information is
5 directly from the city, so that's what the city is
6 telling me.
7 Q. So what independent diligence have you
8 done to assess that information?
9 A. I purely relied on the city's
10 information relative to the completion and the design
11 elements of the project.
12 Q. And what does 100 percent complete mean
13 in your understanding?
14 A. That they are fully vested and they
15 could be ready to build that element.
16 Q. So vested meaning their permits are
17 issued?
18 A. They may or may not. I don't know for
19 a fact if the permits are issued, but they would be
20 ready to at least apply for permits or to move
21 forward with the project.
22 Q. And when you say "vested," so they're
23 applying for something they're legally entitled to
24 pursue and they have -- I mean, I was going to say
25 full, did 100 percent mean a bid set of construction

1 January to April 2019 time frame?
2 A. Yeah, it may have been. I mean, the
3 whole process has been ongoing and changes were made.
4 And so just like any project, sometimes things get
5 pushed back.
6 Q. Okay.
7 MR. LUTZ: Can I get this marked.
8 (Exhibit-4 marked.)
9 Q. Are you familiar with this chart?
10 A. No.
11 Q. So did you have any discussions with
12 the city staff as to permitting work and
13 environmental review work that must precede
14 construction of the Seattle waterfront project
15 improvements you have assumed were built as of
16 October 1, 2019?
17 A. It wasn't relevant to me. My analysis
18 date was October '19. I just would assume that the
19 project was completed as of that time, so any SEPA
20 issues or other issues like that, they weren't of
21 concern to me.
22 Q. Well, you wanted to be assured that it
23 was reasonably probable that the components were
24 going to be constructed, correct?
25 A. That's an assumption that I made. It

1 was just purely an assumption that they would be made
2 at a bare minimum to those standards, period. I'm
3 not an engineer, I'm not a design person, I don't
4 control those elements. It's strictly an appraisal
5 assumption that I made that the projects would be
6 completed.
7 Q. All right. So if you are acting as an
8 appraiser and asked to value a project that requires
9 discretionary permits to be issued before it can be
10 pursued, how would you go about doing that?
11 A. The scope of my assignment was to
12 assume all of these elements have been completed. So
13 based on the 30 percent design, that's what I based
14 my analysis on. The scope of my assignment didn't go
15 beyond that. It didn't get into these other
16 hypothetical situations of how I would look at other
17 SEPA elements or anything like that. It was just
18 purely to base my analysis on the fact that these
19 elements were completed as of that date and time.
20 Q. Okay. Well, so let's ask the question
21 a different way.
22 If you were going to assume that a
23 buyer is interested in a property for redevelopment,
24 do you take into account in valuing the property for
25 a lender, for example, the type of permit required

and the duration of process required to secure an approval?

MR. FILIPINI: Object to form.

A. Yeah, it would depend on obviously the scope of service and who my client was. For instance, if I was doing a subdivision analysis, I would look at where they're at, when it's going to come to market, what the absorption period would be and those types of elements, because that would be the scope and the basis of me valuing property for a bank so they can loan money on it.

This analysis is totally different than that. It's based on specific assumptions. They're not relative to SEPA or the design process or anything like that. They're just strictly based on assuming the project is completed as of that date and time.

Q. Okay, and going back to your subdivision example, when you are valuing, how do you account for project risk, what are the components of project risk you would look at in valuing a potential subdivision?

MR. FILIPINI: Object to the form.

A. The big risk obviously with residential property is how long it's going to take to absorb the

Q. Do you know generally what the ranges were, like how much would occupancy change, how much would rates change?

A. It was pretty modest, and again, I would have to go back through and look at those, maybe occupancy 1 or 2 percent, as I recall, and again, I would need to go back through and review those, but yeah.

Q. So for any particular one hotel, occupancy might change let's say 2 percent, but the rate might change 1 percent, the numbers don't necessarily have to be the same?

A. Yeah, it would just depend on the hotel, the location, the proximity to the improvements, that type of thing. It would be -- they would drive our decision as to the relevancy of it in the after condition relative to the -- in the LID improvements.

Q. In the before scenario, how were you able to come up with occupancy and rate information assuming the viaduct removal and the baseline improvements?

A. Yeah, again, just making a judgment call as to how it would affect the daily rates, how it would affect the expenses were probably fairly --

1 some expenses were adjusted by that, but, you know,
2 the same type of basis that we did with the after, on
3 the best information we could find.
4 Q. And were those adjustments generally
5 upward from -- I assume that if you were taking let's
6 say an Expedia rate, that adjustment might go upward
7 for removal of the viaduct and those baseline
8 improvements?
9 A. Correct, depending on the location of
10 the hotel in relation to the waterfront and where
11 it's located at.
12 Q. Okay. Your report basically has found
13 that hotel properties would experience a slightly
14 larger increase in value due primarily to increase in
15 tourism; is that right?
16 A. Correct.
17 Q. Can you just walk me through that, kind
18 of how a hotel might get either increased revenue or
19 like a higher cap rate due to increased tourism?
20 MR. LUTZ: Lower capital rate.
21 Q. Sorry, lower cap rate.
22 A. A what?
23 The before value we looked at, you
24 know, the Kidder Mathews supply and demand factor and
25 CBRE and other published sources on supply and demand

1 hotel would receive.
2 Q. Then it looks like -- can you explain
3 this part to me? None of this is --
4 A. Yeah, we have -- because we're doing so
5 many properties, we have different -- we try to keep
6 different sets that we can use in a multitude of
7 ways. So these are all just zero docs because
8 they're not relevant to this property.
9 Q. Understood. Basically you add up all
10 of your revenue, you subtract all of your expenses
11 and you come up with an income, a net income?
12 A. A net income, right.
13 Q. The net income for the before is
14 basically all of these things added and subtracted,
15 and the one for after is each of these things
16 multiplied by 1.75 percent, and then you added and
17 subtracted them? I mean, you added all the revenue
18 and you subtracted all the expenses?
19 A. Correct.
20 Q. Okay. Can you explain to me why you
21 have a 1.75 and a 2 percent?
22 A. Just based on the market and what we
23 felt the increase, reasonable increase in rate would
24 be.
25 Q. And how did this number, how did you

1 waterfront amenity and things of that nature, how an
2 investor would, a reasonable range a investor would
3 consider and a cap rate change based on those
4 factors.
5 Q. Okay. Did you at all -- because
6 parking is an issue for downtown and for hotels and
7 all commercial properties, did you take into
8 consideration any impact from parking?
9 A. In what regard?
10 Q. Well, I see parking income here. I
11 don't see any analysis of whether or not a special
12 benefit might decrease due to like let's say loss of
13 parking or impact of parking.
14 A. Well, for the property on the
15 waterfront, I think they had about 128 lost stalls
16 along the waterfront. That would have been
17 considered in our analysis where it was relevant. We
18 didn't do a separate parking analysis study that came
19 up with a number and was deducted from something.
20 It was just something we would have
21 looked at relative to each individual property as we
22 were appraising them. Such as, you know, the pier,
23 Ivars, 54, 55, that's where the parking was right in
24 front of. So we just looked at it on a per-parcel
25 basis, and if there was a parking impact, we would

have reflected it in our analysis and made an adjustment in our after value to reflect that difference.

Q. But that wouldn't be in the spreadsheet?

A. We did not do a separate parking analysis, no.

Q. What about traffic analysis, for example, increased traffic due to narrower lanes or --

A. Well, the LID is not about traffic. It's about esthetic amenities and park amenities, and the street design and flow would be the same both in the before and after. So what the city is doing in the Pike/Pine corridor and other areas, they would have done regardless of the LID.

So when you get down to 1st, regardless of the -- if the LID wasn't through or not, I mean, those streetscape amenities would be the same as far as traffic is concerned.

Q. Did you do a similar like scenario-based analysis for every hotel?

A. Yes.

Q. Okay, and would that be a rate and vacancy change analysis with the high/low rate?

1 and not used in a before context.
2 Q. Then you had talked about, you've done
3 a different analysis for each of the hotels in terms
4 of looking at the hotel individually, making a
5 judgment about what increase in occupancy rate it
6 might be, what increase in average annual -- or
7 average room rate might be, what reduction in cap
8 rate might be. It's my understanding, just confirm,
9 whether those are, all of those are still
10 professional judgment determinations?
11 A. Everything we do is a professional
12 judgment. You know, I'm an appraiser. I estimate
13 things. That's what I'm hired to do.
14 Q. Okay. But so, for example, you're
15 making fairly modest cap rate adjustments like, yeah,
16 here you go, I'm going from a -- what hotel is this?
17 MS. LIN: This is actually the Martin
18 Apartments.
19 Q. The Martin Apartments. So in the
20 before you've got a cap rate of 4.25?
21 A. Uh-huh.
22 Q. And in after, you are looking at a cap
23 rate reduction of between 3/100ths and 1/100th?
24 A. Yeah, we're basically saying any
25 investor would be looking at that as an investment

with the park in place as slightly marginal from the before. There wouldn't be a big change in value. That's probably reflected in the benefit I would imagine.

Q. So you're shaving somewhere between 1/100th and 3/100ths of a percent off the cap rate?

A. Yes.

Q. And in your mind, that reflects, I think there's something there, but it's little?

A. In a prospective buyer/seller's mind looking at market value, two well informed people in the market, they would pay a slightly lower cap rate with the LID in place than they would with it not in place in a before situation.

Q. This isn't driven by any particular academic study or --

A. No.

MR. LUTZ: Okay. I have one last -- well, do you want to go.

MS. LIN: I do want to ask a few questions about this one.

MR. LUTZ: I'm sorry, I just jumped in.

MS. LIN: I wanted to know if you had any -- go ahead.

BY MR. LUTZ:

1 E X A M I N A T I O N
2 BY MR. LUTZ:
3 Q. I have two client-specific questions.
4 And so the first is page -- the fourth
5 page of these spreadsheets.
6 MR. FILIPINI: Is that Exhibit-1?
7 Q. Exhibit-1, and it is the sixth property
8 down.
9 MR. FILIPINI: I just need a minute to
10 get there.
11 Q. Okay.
12 A. Page?
13 Q. Page 4 of the foldout pages, page 4 of
14 13.
15 A. Okay.
16 Q. The sixth property down, B287.
17 A. The Foster Marshall Building?
18 Q. Yes, United Way.
19 So in general, you treated special
20 purpose properties like charities as getting a lower
21 assessment; is that correct?
22 A. Say it again, please.
23 Q. It was my understanding that you
24 treated in general special purpose properties such as
25 charitable institutions properties as getting zero --

a lower or zero assessment.

A. Well, if there was a deed restriction, which there were on 20, 30-some properties, they couldn't change the use, there was no relative income change they could make. They just simply didn't benefit from the property because they couldn't change or get greater rent or anything. So there was a number of properties simply had a zero benefit, yes.

Q. So United Way has an assessment of $139,097. Did you work on that project at all?

A. Yes, and I understand now there's a TDR, and I wasn't aware of it but I am now, that they didn't sell their TDR rights. I thought we had all the TDR right information, but we didn't on this one.

I would say this property would need adjustment to reflect the fact it doesn't have those air rights anymore. This benefit on this particular property would be high relative to factual information.

Q. Okay. So the second one I wanted to go to was page 12 of 13. It's property E061, Fourth Avenue Associates. The property name is Century Square Retail.

A. What page again?

Q. 12 of 13.
A. Okay, got it.
Q. Found it?
A. Yeah.
Q. Do you have familiarity with this property?
A. Generally, yes. I mean, I would have gone by and looked at it.
Q. Okay. Are you aware, and I can also ask you a hypothetical about this, but are you aware of a height limit on that property?
A. I would have to go back and check our records. As I sit here, I am not.
Q. So we can -- this will be coming up in the hearing. So hypothetically, if you did not consider that this building has a two-story height limit in your valuation assessment, that would be an indication that the assessment might need to be revised?
MR. FILIPINI: Object to form.
Go ahead.
A. Correct.
Q. Is there a way from this chart to determine improvement value versus land value?
A. No.

Q. Okay.
A. There is on the analysis chart that we gave you.
Q. (Indicating).
A. Yeah.
Q. Okay. I'm going to hand you this for a minute, Fourth Avenue.
A. Sure.
Q. So as I'm reading that, it has a -- it's mostly land value with a small residual improvement value.
A. Correct.
Q. And the land value is 32 million?
A. Correct.
Q. On the site of that size, does a $32 million land valuation line up with a property that's got a two-story height limit?
A. Yeah, if there is a height restriction on this, then that is a high land value. You would need to adjust it.
Q. Okay. Thank you.
A. You bet.
MR. LUTZ: That's all I got.
MS. TERWILLIGER: Should we break?
MR. REUTER: I have questions when it's

1 background information that is using terminology from
2 a report, that we're just recognizing that the market
3 is going to react differently to waterfront amenities
4 because they're much more desirable than they were in
5 the before situation, having the overlook walk,
6 having the promenade and the other streetscape
7 improvements.
8 Q. When you say that is background
9 information, how did this background information
10 inform your special benefit analysis?
11 A. Well, it informed us that the market,
12 positive market forces that create higher values
13 associated with park amenities, like the subject
14 project.
15 Q. And for purposes of concluding the park
16 would be excellent after the waterfront LID
17 improvement, what area were you considering as part
18 of that park?
19 A. Well, we're looking at the project as
20 an entity, so the more park-like amenities are the
21 promenade and the overlook walk area. So we're just
22 looking at it more in general terms, that we're
23 saying hey, it's going from something that's average
24 to above average, to excellent. We recognize a
25 change in the market and these are words that were

used to associate that difference, just to reflect that the market would look at it more favorably.

Q. You're not really thinking about Pike/Pine, or you are?

A. Not so much as far as park-like amenities. They're more streetscape amenities. The number of those New York studies showed positive reactions to more streetscape amenities, but obviously as you move further away from the waterfront, you're more streetscape type amenities than you are park type amenities.

Q. Okay. Without Pier 58, are the waterfront LID improvements more accurately characterized as street beautification?

A. Well, without Pier 58?

Q. Yeah.

A. Well, I think Pier 58, the promenade, the overlook walk, would combine into more park-like amenities than would the Pioneer Square and Pike/Pine corridors.

Q. It's those three together?

A. They would be the main park-like components that we considered.

Q. So when we're drawing boundaries around a park, those are the core park elements that you're

thinking of?

A. Correct.

MS. LIN: I don't have any other questions.

MR. MOSES: I have a few more questions. Maybe it makes sense to ask them now.

MS. LIN: Go ahead.

E X A M I N A T I O N

BY MR. MOSES:

Q. Maybe you've addressed some of these, I'm going to skip through theme real quick.

Do you have any precedents where the Crompton paper was used as evidence in any kind of an assessment district?

A. No, I don't.

Q. On page 19 and 20 of the Crompton paper, it provides a methodology for assessing the quality of a park. It says, "Create each park in the system on a five point scale from blighted to excellent. The grading can be done either by park staff or by a panel of residents familiar with each of the sites. The scales is defined primarily by the emotional response of people in the park's area of influence."

1 A. Yes.
2 Q. Okay. Does your special benefit
3 analysis or does your calculation account for any
4 decrease in value that the properties might encounter
5 as a result of the construction and the disruption?
6 A. No, that's not something that's
7 considered in our analysis.
8 Q. Okay. Have you ever considered that in
9 one of your special benefit analyses?
10 A. No. It gets more back to eminent
11 domain. It's not compensable, so it's not something
12 we consider.
13 Q. Okay.
14 A. It's a fact, it's a fact that it
15 happens, but from an appraisal standpoint, it's not
16 something you consider.
17 Q. Okay. Have you ever had occasion to in
18 the course of your work come across an improvement
19 district that created special benefits for some
20 property owners and damages or negative benefits for
21 other property owners?
22 A. When we do a special benefit study, we
23 assume that all of the right-of-way area or any area
24 that the public or the city or the county or the
25 state took, that the property owner has been fairly

1 C H A N G E S H E E T

2 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET, SHOWING PAGE, LINE AND CORRECTION/REASON.

3 ---

PAGE/LINE	CORRECTION/REASON
Pg 72- Line 22 Change	The chart on page 7 of the final special benefit study report for special purpose properties was reversed. It should have stated a high of 1.00% and low of less than 0.10%. The reason it is now less than 0.10% is because upon further review of the study, one of the special benefit estimates for the special properties was below 0.10%.
Pg 162 Line 17 Change	I meant to say 0.05% up near Denny Way was the lowest special benefit amount. Any change beyond that, such as properties on the other side of Denny Way, was general benefit not special benefit.
Pg 217 Line 20 Change	I meant to say I think it was smaller than 0.10% or below. It was a very low percentage amount.
Pg 218 Line 4 Change	I said 0.08% but I meant to say 0.05%, which was the lowest percentage change number in the study.

4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21

22 ---

ROBERT J. MACAULAY, MAI

23 TAKEN: February 27, 2020

24 Re: In re Proposed Assessment Roll for LID 6751, Case Nos. CWF-0318, et al

25

1
2
3 S I G N A T U R E
4
5 I declare under penalty of perjury under the
6 laws of the State of Washington that I have read my
7 within deposition, and the same is true and accurate,
8 save and except for changes and/or corrections, if
9 any, as indicated by me on the CHANGE SHEET flyleaf
10 page hereof. Signed in Everett, Snohomish Co. WA on
11 the 25th day of March, 2020.
12
13
14
15 .....
16 ROBERT J. MACAULAY, MAI
17 Taken: February 27, 2020
18
19
20
21
22
23
24
25

1 Date filed: 3/31/2020

2

3 GERARD LUTZ
Perkins Coie
4 10885 NE 4th, Ste 700
Bellevue, Washington 98004

5

6

7 NOTICE RE CHANGES TO ORIGINAL DEPOSITION

8 Case Name: In re Proposed Assessment Roll
For LID 6751
9 Venue: Hearing Examiner, City of Seattle
Cause: Case Nos. CWF-0318, et al
10 Witness: ROBERT J. MACAULAY, MAI
Taken: February 27, 2020

11

Pursuant to CR 30(e), the deposition transcript was
12 made available with Signature Page and Change Sheet
to the above-referenced witness for examination,
13 reading, and signing.

14 [X] Enclosed is a copy of the Signature Page and
change Sheet, if any, to the above-referenced
15 original deposition transcript.

16 [ ] No signature page, corrections, or changes
were received by this office within the
17 30-day signature period.

18

19

20 Margaret Walkky, CCR No. 2540

21

22

23

24 cc: File
MARK FILIPINI
25 MOLLY TERWILLIGER

John Crompton
1515 Foxfire Dr
College Station, TX 77845

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

Dear Mr. Lutz,

You requested me to "assess whether Mr. Macaulay and team have properly applied your and related studies in the City's study, whether the benefit areas and assigned special benefits are supportable or speculative, and how, in the absence of a site-specific study of these proposals, you would apply the information to be included in your new book." My comments are arranged under eight headings.

Updated material

The Appraiser (Mr. Robert Macaulay) based his use of my work on an article published in the *Journal of Leisure Research* (JLR) in 2001[1]. Since its appearance, this article has been cited in 335 other articles published in the scientific literature. The high citation rate suggests it has been viewed as a foundation paper upon which other economists and social scientists have built. The appraiser also referenced that it was "updated in 2014." He does not cite a reference for the 2014 update, and I am unaware of such an update. I did publish a book in 2004 addressing the same issue.[2] I assume that is the update to which he is referring. That book incorporated the material from the JLR publication and did not update it. It was written in non-scientific language, because it was targeted at a professional rather than a scientific audience.

The Appraiser (p.45) correctly cites the 2001 article as concluding, "A positive impact of 20% on property values abutting or fronting a passive park area is a reasonable starting point guideline" (p.29). However, the Appraiser did not note that this conclusion was preceded by an important qualification: "A definitive generalizable answer to [the magnitude of the proximate effect] is not feasible given the substantial variation in the size, usage and design of park lands in the studies and the disparity in the residential areas around them which were investigated… If it is a heavily used park…then the proximate value increment may be minimal on abutting properties but may reach 10% on properties two or three blocks away" (p.29).

In 2020, together with a co-author, I updated the 2001 JLR article (51(2), 127-146). Since the new findings were published only a few months ago,[3] obviously, the Appraiser did not have access to these updated findings. However, if he had contacted me, I would have made the paper available to him. It was first submitted to JLR for review in November 2018 and after changes made in response to suggestions offered by expert reviewers, it was published online on August 12, 2019.

The 33 studies located in the scientific literature that addressed this issue which we reviewed were much more accurate than those reviewed in the earlier article, reflecting five methodological developments that emerged around the start of the new millennium: Hedonic

models became more robust; statistical tools associated with hedonic analyses were more sophisticated; Geographic Information Systems enabled distance to be measured along road networks rather than straight lines; electronic databases from Multiple Listing Services enabled larger samples to be used; and market sales rather than appraised values were used. As a result of these improvements our updated review concluded:

> When the highest premiums reported in each study were tabulated, an approximately equal number were assigned to each of three categories: less than 4%, 5%-9%, and 10% or more. This suggests the recommendation from the 2001 review that 20% on property values abutting or fronting a passive park area as a reasonable starting point guideline was overly generous. A more appropriate starting point guideline on this kind of property would appear to be 8%-10% (p.15).

Differences in Types of Properties.

The studies reviewed in both the 2001 and 2020 JLR publications predominantly used single-family homes in their samples. This is different from the mix of residential units in the LID which are comprised almost exclusively of apartments and condominiums.

Our 2020 JLR review concluded:

> The percentage premium associated with multifamily properties or small lots was higher than that associated with single-family or large lot properties. This finding was consistent in all nine studies that addressed this issue. It is explained by privately owned yard space associated with single family homes serving as a partial substitute for public parks (p.147).

Backyards in single family homes frequently contain such items as playground equipment, exercise equipment, decks with tables and chairs, barbeque facilities, basketball hoops, and grass spaces for Frisbee, soccer, tag or whatever. These amenities facilitate socialization and entertainment for family and friends. For many, they become the center of home and neighborhood life. In essence, in some homes the backyard substitutes for, and replaces, some of the facilities typically incorporated into neighborhood parks.

Hence, a case can be made that the premiums for apartments and condominiums in the LID are likely to be larger because they have no backyards, and the availability of a proximate park compensates for this lack of private space.[3] However, the LID "park improvements" are best characterized as a parkway not a park. The "park opportunities" do not appear to incorporate these types of facilities or to be designed to perform this function. Rather, it appears designed as an attractive corridor to facilitate exercise, and exposure to the ambiance of water views.

The Appraiser provides a separate spreadsheet for "All other LID Commercial Properties." It is unclear to me if the JLR review was used in ascertaining premiums for these 1,051 properties but, clearly, it is not appropriate to extrapolate its findings for deriving values for high rise office buildings, retail uses, hotels et al.

The exemplar demonstrating the impact of rejuvenated or new park land on commercial values was Bryant Park in New York City. Attached as an appendix to this report is a description of its rejuvenation that I included in my most recent book which the publishers tell me will be released next month.[4]

The success of the rejuvenation of that 8-acre park in the early 1990s which generated substantial increases in commercial office rents for the surrounding properties, led many other cities to emulate it. However, almost all the premiums associated with those parks are captured by properties directly fronting on to the parks, and they do not extend much beyond that immediate area. This is reflected in the narrow geographic area of the Business Improvement Districts that typically are established to fund and subsequently maintain such parks. It appears the Appraiser has extended the range for commercial property assessments far beyond those immediately abutting the LID "park improvements."

Are the "Park Improvements" Best Characterized as a Park, Greenway or Parkway?

The Appraiser's suggestion that the green space in the LID is a "park" is a misrepresentation. Although the area incorporating the "park improvements" appears to be approximately 36 acres, two-thirds of that 36 acres appears to be hardscape. This suggests the appropriate designation is "parkway" rather than "park." This distinction is critical, because the JLR review to which the Appraiser frequently refers pertained exclusively to "parks and open space." It did not refer to parkways or greenways. The importance of the distinction stems from the empirical literature that shows the premiums from parks on property values are likely to be much higher and to extend for a greater distance, than those from parkways or greenways.

In the narrative relating to his valuation of residential condominiums, the Appraiser makes it clear he is referring to premiums associated with parks rather than parkways or greenways. For example, "The research presents clear indications that well-designed park and street improvement projects have a positive effect on surrounding neighborhoods and property values" (p.82).

The Appraiser appears to implicitly acknowledge the distinction between parks, parkways and greenways, because three of the six projects he examined to "compare various project components" were parkways or greenways, rather than parks. (Tom McCall Parkway, Rose Kennedy Greenway, and Embarcadero Parkway).

In his exposition of the tools used in his valuation analysis, the Appraiser states:

> As mentioned throughout, increases in market value of individual parcels result primarily from enhanced location (improved pedestrian connections, open space, streetscapes) which, in turn, enhances the aesthetic appeal of the waterfront and a large segment of the downtown CBD (p.59).

Later, in his valuation summary describing the impact of the LID he states:

> With the LID in place, there is a new waterfront promenade, consisting of continuous open space on the west side of the waterfront corridor from Pine Street to South

> Washington Street, with enhanced landscaping and streetscapes. Pedestrian accessibility to the waterfront and view opportunities are greatly improved (p. 80).

Parks are conspicuously absent from these descriptions. Rather, they describe beautification of a highway with an accompanying well-landscaped promenade.

The genesis of American parkways lies in the tree-lined boulevards of Paris that were established in the 18th and 19th centuries. They were designed for "promenading." The belief was that pedestrian walkable areas would add value to proximate residences.[5] They were transposed to the U.S. by Olmsted and Vaux, the highly influential landscape architects who were responsible for many of the pioneering large urban parks in the U. S. For the most part, they preferred the term "parkways" to "boulevards" but they used them as synonyms.

Their parkways were intended to serve either as a means of approach to a large park or as a connection between large parks. Parkway was defined as "a road that is of picturesque character bordered by trees and shrubs,"[6] and they were regarded as "narrow informal elongations." Commercial vehicles were barred, and the intent was to make driving through them a recreational experience.[7] This meant that most of the benefit was conferred on those driving along the artery, and on those fronting on it who enjoyed views and exposure to the intensive landscaping.

Parkways were designed for through traffic and all intersections were either bridged or tunneled under the parkways. The central drives were flanked with generous 30-35-foot pedestrian medians. Parallel 25-foot side roads for local and commercial traffic were constructed along with sidewalks. All elements of a parkway were separated by two rows of trees. Although it does not possess all these elements, these descriptions appear to be reasonable representations of the LID "park improvements."

Importantly, in the context of the LID, it was believed that added real estate value from parkways was confined to properties directly fronting onto them. Kansas City was renowned for its system of parkways. In a report to his Board of Park Commissioners in 1910, George E. Kessler, the superintendent of parks, who was a highly regarded national figure in the parks field, stated: "Conservative real estate men [in Kansas City] estimated the present value of the grounds fronting on the Kansas City boulevards, less building improvements. They compared this valuation with that of ground fronting adjacent streets which were not on boulevards. They found that the difference in favor of the boulevards real estate was $250,000 more than the entire cost to taxpayers of all the parks and boulevards embraced in the system."[8]

The distinction between a highway and a recreational parkway disappeared from the U.S. urban infrastructure vocabulary after the Second World War. Today, when the term "parkway" is adopted, the intent is generally to upgrade perceptions of an artery's status from an ordinary city street by providing more comprehensive landscaping and, consequently, conferring on it the image properties associated with the word "parkway."

In the last two decades of the 20th century, the term "greenways" entered the urban infrastructure lexicon. Greenways are not wide swaths of land like parks, rather they are relatively narrow

corridors that have two major functions: (i) to link and facilitate hike and bike access between residential areas and places of employment and/or parks; and (ii) to provide opportunities for linear forms of outdoor recreation (e.g., hiking, jogging, bicycling, inline skating, and ordinary walking).

Their popularization stemmed from the 1987 report of the President's Commission on Americans Outdoors. The Commission recommended communities establish "greenways," which they defined as "corridors" that "provide access to open spaces close to where they live." The Commission conceptualized these greenways as "fingers of green that reach out from around and through communities all across America" (p. 142).[9] The first extended work exploring the potential of greenways followed soon after and defined greenways as "linear open spaces…converted to recreational use" (p. 1).[10]

Most of the enhanced value of parks derives from people's willingness to pay a premium to be proximate to the tranquility, peace and psychological relaxation many parks provide. In contrast, enhanced property values associated with greenways are likely to come from access to a trail, rather than from views of nature or open space. It is their functionality or activity potential that is likely to confer most added value, rather than the panorama and ambiance associated with parks.

In my 2004 *Proximate Principle* book[2], the "plug and chug" estimation process from which the Appraiser garnered the blocks measure that is described in the following section, I asserted:

> Results from the limited number of empirical studies available at this point indicate that while trails are unlikely to exert a negative impact on proximate values, there is insufficient evidence to suggest they have a positive impact. The dominant sentiment is that trails have no impact on property values, so no proximate premium is recommended for them here (p.11).

While the Appraiser elected to use the blocks measure from the "plug and chug" "best guess" estimation procedure, he chose not to use the trails findings. These are not as accurate a descriptor for the LID as "parkway" but are a closer depiction of the "park improvements" than parks.

Again, in a recent article, a co-author and I updated those greenway trail 2004 results. We reviewed 20 studies which had been published since 1999 that measured the impact of greenways and trails on proximate property values using hedonic analysis. None of these greenways resembled the LID in having a major highway running through them. Many of them were "rails to trails" projects which transformed disused railroad tracks into hike and bike trails. Our review of greenway trails concluded: "The results indicate that a small positive premium of between 3% and 5% was the most widespread outcome for single-family homes located proximate to a trail" (p. 97).[11]

Distance for which the "Park Improvements" Impact Property Values.

The 2001 JLR study concluded:

> The diversity of the study contexts makes it non-feasible to offer a generalizable definitive answer to the question concerning the distance over which the proximate impact of park land and open space extends. However, there appeared to be wide agreement that it had substantial impact up to 500 feet and that in the case of community sized parks it extended out to 2,000 feet (p. 29).[1]

The 2020 JLR updated review similarly concluded: "This synthesis endorsed a conclusion from the 2001 review that high premiums generally were limited to properties within 500 feet, but for large parks they extended out to 2,000 feet" (p. 142).[3]

Both the JLR 2001 and 2020 scientific papers reported the range of impacts in feet. They made no reference to number of blocks. However, the Appraiser discarded the use of feet and replaced it with "blocks." He did that throughout his report, which allows the reader to incorrectly infer it was a synonym for the feet measure.

His blocks measure stems from my 2004 *Proximate Principle* book, which was written for a non-science, professional audience.[2] In that volume, I included an approximation "plug and chug" simplified procedure, based on the empirical findings, that non-scientists could adopt for use in their communities. I explained it was a template: "it is emphasized that this approach only offers a rather crude 'best guess.'" The template suggested, "The area of proximate impact of a park should be limited to 500 feet or three blocks" (p. 9). My intent in using the three-block term was to reify the 500 feet range metric. The magnitude of 500 feet is relatively difficult to grasp, whereas three blocks is easily recognizable. It reflected the approximate distance in most of the contexts in which the studies in our review were undertaken. It was anticipated the block synonym would be more understandable and easier for non-scientists to grasp. The intent was to offer a synonym for 500 feet, not an alternative to it. Clearly, if the block measure is applied to the 300-foot blocks that are more typical in the LID than the intended 150-feet distance, it extends the impacted area far beyond the 500-feet distance reported in the JLR studies.

In his interpretation of that statement ("The area of proximate impact of a park should be limited to 500 feet or three blocks"), the Appraiser states:

> "In terms of direct residential impact, John Crompton's ongoing studies into the impact of parks on property values have been used by municipalities across the country. Crompton's "proximate principle" represents a "capitalization" of park land into increased property values and a widening of the tax base. One major finding based on his results deals with the location and proximity of property to the park improvements—both in urban and suburban environments:
>
> - 75% of the benefit from a park is captured within 500 feet, or three blocks.
> - The remaining 25% of the benefit is likely dissipated over a 500 to 2,000-foot range, or 4 to 12 city blocks" (p. 83 & p. 46).

In his first bullet, the Appraiser inserts a comma between the two measures, "…within 500 feet, or three blocks." This comma was added by the Appraiser. It was not in the original Crompton manuscript. This insert reinforces an inference that the two measures are alternatives, whereas

without the comma they are more likely to be accurately recognized as synonyms which was the intent.

The Appraiser throughout his report, disregarded the 500 and 2,000-feet measures and used only the blocks measures for the LID assessments. In addition to the comma insert, the above statement misrepresents my work in six ways:

- It inappropriately applied findings from our review of parks to a parkway.
- The parks review was based on residential dwellings, predominantly single-family homes, and the Appraiser inappropriately extended the findings to include commercial buildings.
- At my request, a GIS map was produced using the network metric showing the LID boundaries and proximate distances to the "park improvements" and it is attached to this report as appendix 2. It shows that 500 feet distance from the "park improvements" is either one or two blocks. Hence, using the block measure, rather than the feet measure that was reported in the JLR review, has the effect of inappropriately extending the LID impact significantly beyond that which the park study indicated (even if it was legitimate to use the park review's findings).
- The Appraiser's extension of the impact distance to 12 blocks was an incorrect interpretation of our work for two reasons.
    - First, our conclusion that often a small increment of impact extended out to 2,000 feet applied to "community parks." The definition of community parks in the Seattle Parks Department Master Plan is: "Community parks satisfy the recreation needs of multiple neighborhoods. They generally accommodate group activities and recreational facilities not available at neighborhood parks. They may have athletic fields, large open spaces, paths, benches, natural areas, and restrooms. Community parks are accessible by arterial or collector streets, and usually include off-street parking" (p. 97)[12]. The enhanced array of amenities included in community parks accounts for them often adding a small increment of value to properties within 2,000 feet. Clearly, the proposed "park improvements" in the LID do not incorporate a comparable array of amenities and so, use of the 2000-feet metric is inappropriate.
    - A second incorrect interpretation was the failure to recognize that all the studies reviewed in our most recent JLR paper used network analysis to measure impact distance. This means the 2,000 feet refers to distance along road networks, not "as the crow flies." When the distance from the "park improvements" is measured along roadways, the range of impact is much smaller than is shown by the current LID parameters.
- The GIS map shows the LID includes corridors extending east across Alaskan Way up to Western Ave and the Pike Place Market vicinity. Clearly, these are not "park improvements." They bear no relationship to the park sites that constituted the samples studied in the JLR reviews.

These inaccurate interpretations of our work resulted in the Appraiser inappropriately concluding (referencing a streetscape study as well as our JLR review): "Both studies indicate a geographical radius of benefit within 12 blocks, but most significantly within the first three blocks" (p.56).

Use of the Park Quality Scale.

The Appraiser states: "Based on Crompton's park rating scale and considering the existing waterfront amenity, the Waterfront Seattle project would increase the quality rating from above average to excellent, which indicates an average increase in value of 5% for condominiums within a three-block radius" (p.56). This is a misapplication and misinterpretation of my work. The reality of the Appraiser's conclusion is that it is based on his judgement, experience and expertise; it does not derive from any of my publications or from scientific empirical findings.

In the 2004 *Proximate Principle* book a "Park Quality Scale for Determining Proximate Principle Premiums" was included, as part of my "plug and chug" approximation procedure. The Appraiser reproduces it in his report (p.46) as shown below.

Park Quality Scale for Determining Proximate Premiums

Unusual Excellence	A signature park; exceptionally attractive; natural resource based; distinctive landscape and/or topography; often mentioned in sales advertisements for nearby properties; well maintained; genuine ambiance; engenders a high level of community pride and "passionate attachment."
Above Average	Natural resource based; has charm and dignity; regarded with affection by the local community; pleasant; well maintained.
Average	Rather nondescript; not really "noticed" by the local community; adequately maintained; no distinguishing features
Below Average	Sterile; absence of landscaping or trees; athletic fields with noise, lights, congestion; intensive use
Dispirited, Blighted	Dilapidated, decrepit facilities; broken equipment; unkempt, dirty; unofficial depository for trash; noisy; undesirable groups congregate there; rejected and avoided by the community

Immediately following the Park Quality Table in the Appraiser's report, his narrative continues as follows (p.47):

- Condominiums within a three-block radius typically experience increases in property value of:

Quality of Park	**Distance**	**Green Premium**
Excellent-Average	1 block	16-20%
Excellent	1-3 blocks (500ft)	15%
Above Average	1-3 blocks (500ft)	10%

Average	1-3 blocks (500ft)	5%
Poor	1-3 blocks (500ft)	-5%

In the case of the Waterfront Seattle project, it is important to consider that there is an existing waterfront amenity; the current waterfront area can be rated as average to above average since it provides a unique public amenity. However, when considering the waterfront area as extending east across Alaskan Way up to Western Avenue and the Pike Place Market vicinity, the rating declines to merely average due largely to the poor connectivity with city streets. The existing alleys, stairwells, and dim lighting areas contribute to an undesirable atmosphere, especially at night, despite the active foot traffic and tourist-oriented venues along the waterfront. The reader is referred to the City-provided documents in the addenda volume for further discussion and descriptions of existing or "without LID" conditions.

With the project elements completed, the area will be upgraded to excellent, which indicates an average 5% increase in condominium values situated within three blocks of the improvements/new amenities. Note that this is an average based on empirical data and is utilized for background information when analyzing the subject project elements.

The above article sets up a good basis for the argument that a larger, linear, well-maintained public park that attracts active users – such as the Seattle waterfront park – will likely have a positive impact on residential property values and that the most benefit is evident within a two- to three- block radius.

There are three concerns relating to the Appraiser's table:

1). The columns in the "increased property value" table are different from those used in the Park Quality Scale which the Appraiser purports to represent:

- Under the "Quality of Park" heading, the Appraiser uses different ratings than are used in the Scale. The source, rationale, criteria and definitions of the descriptors that comprise the new rating scale are not explained. The new scale is not derived from the Quality of Park Scale. Indeed, there appears to be no connection between them.
- Under the "Distance" heading he introduces a new category "1 block." No rationale is provided for it. The subsequent categories refer to the 1-3 block measure which he parenthetically infers equate to 500ft, but in fact in the LID context a three-block measure significantly exceeds that range.
- The "Green Premium" heading in the third column is a new term that the Appraiser has introduced. The source of the percentage premiums used in this column is not explained. They seem to be entirely arbitrary. They do not come from the original table in the 2004 *Proximate Principle* publication which stated:

  > "Based on the results reported in the monograph, the suggested premiums applied to all single-family home properties within the 500-foot proximate area for each of the three highest categories shown the Table are;

Unusual excellence: 15%
Above average: 10%
Average: 5%"

Clearly, the premiums suggested by the Appraiser are much higher than those emanating from the 2004 publication from which he inappropriately infers they are derived.

2). The definition descriptors in Crompton's Park Quality Scale were developed specifically for parks. They do not fit the context of the LID parkway. To use them in this way is like comparing the tastes of artichokes and apples. If the Appraiser required a similar scale for the parkway to guide his judgements, then he needed to develop a scale that fits the LID context. Clearly, on its face the scale lacks validity.

3). With a co-author, I recently finished an update of the 2004 *Proximate Principle* book that addresses the impacts of physical amenities on property values. Again, it is targeted at a non-scientific audience. It will be released by Sagamore/Venture Press in the next few weeks.[4] It updates the "plug and chug" numbers. In this revision, the suggested premiums on single-family homes within the 500-foot proximate area for each of the three highest categories shown in the Park Quality Scale table are:

Unusual Excellence: 10%
Above Average: 5%
Average: 3%.
These much smaller percentages reflect the more accurate lower premiums reported in the post-millennium studies.

In addition to concerns with the table, there are three concerns with the narrative cited above that follows it:

a) The narrative states "the current waterfront area can be rated as average to above average since it provides a unique public amenity." Subsequently it states that in another part of the LID "the rating declines to merely average." No valid greenway or parkway scale has been developed that describes or defines "average" and "above average." Without a benchmark scale to serve as a point of reference there are no guiding criteria, so the Appraiser's judgement is arbitrary.
b) The arbitrariness problem continues in the following paragraph: "…which indicates an average 5% increase in condominium values situated within three blocks of the improvements/new amenities. Note that this is an average based on empirical data." It is not based on empirical data. It has no scientific or empirical basis. It is simply the Appraiser's arbitrary judgement and compounds the concerns relating to range of impacts noted in the previous section of this evaluation.
c) The final paragraph cited above states: "The above article sets up a good basis for the argument that a large, linear, well-maintained public park that attracts active users – such as the Seattle waterfront park…" It does not "set up a good basis" since it is based on faulty premises. Further, this is not a "large linear public park"; it is a parkway.

The Negative Impacts of Disamenities on Premiums

Premiums on proximate properties associated with park-like spaces are sometimes at least partially offset by a variety of social and/or environmental disamenities. These may include – congestion, increased traffic flow, lack of parking or unwanted on-street parking, litter, vandalism, intrusive lighting, and groups engaging in morally offensive activities. This led to a number of the studies reviewed in the JLR articles reporting that properties immediately adjacent to a park did not show the highest premium. Rather, it was properties located one or two blocks distant from the park (that were also distant from the source of nuisances) which had the highest premiums.

In the context of the LID, demolishing the viaduct removes a major disamenity for those properties whose view of an ugly and noisy roadway is replaced by an attractive view of the water and new greenway. Clearly, this is likely to have a major positive impact on the value of those properties, but the Appraiser appropriately recognized this as a "before" condition, rather than a benefit from the LID.

The Appraiser identified two potential negative impacts. He indicated loss of parking spaces was incorporated in his assessments: "some parking losses along Alaskan Way in the waterfront area will occur due to the project and this is considered in the analysis" (p.7), but there is no overt description of how it was "considered in the analysis."

He noted the LID was likely to result in an increase of "1.5 million net new visitors to the immediate area, generating $191 million in new annual visitor spending" (p.45). This estimate was juxtaposed in a following paragraph with a quote from the 2001 JLR article which implies he recognized the potential negative nuisance impact on property values of these new visitors: "Parks that serve primarily active recreation users were likely to show much smaller proximate value increase than those accommodating only passive use" (p.28)[1]. His report went on to paraphrase a conclusion from the JLR article: "Neighborhood parks that are primarily used by the surrounding residents result in a higher increase in property values than larger parks that attract active users from outside the neighborhood due to the adverse effects of noise, nuisance and congestion" (p. 46). Again, there is no overt description of the extent to which the Appraiser considered this disamenity impact in his assessments.

The Diminishing Marginal Valuation of Premiums.

The premiums on properties that are proximate to parks and water amenities are derived from two sources: distance from the amenity and views of the amenity. The Appraiser recognized "the view amenity will not change due to the LID project" (p. 48). He offers no estimate of the magnitude of the existing water view premium, since it is outside the scope of his brief. Nevertheless, the magnitude of the water premium is important, because it impacts the perceived value of potential increments of benefit that may emanate from the new greenway.

Surprisingly few empirical studies measuring water views, especially ocean views, have been reported in the scientific literature, but one of them was undertaken in Washington State in the city of Bellingham.[13,14] The study was limited to single-family homes. The authors used hedonic

analysis, which is widely accepted in the scientific community as the most accurate empirical approach to measuring the contribution of each of the multiple factors that impact property values.

The average value premium for an ocean view in the Bellingham study was 25.6%. However, it varied according to the quality of the view. The authors concluded:

> When views are classified into seven categories, the percentage increase in property value attributable to a view ranges from 8.2% for poor partial ocean view, to 18.1% for a lake view, 29.4% for a good partial ocean view, 30.8% for a superior partial ocean view, and 58.9% for an unobstructed ocean view (p. 69).[13]

Like all of us who do this type of analysis, the authors acknowledged that their results were context specific: "All estimated view amenity values are, of course, specific to the Bellingham market."

Two other studies with which I am familiar that perhaps have water views comparable to some properties in the LID were undertaken by a research team in the Cleveland area of Cuyahoga County in Ohio. They pertained to views of Lake Erie. The two analyses reported that properties in the County with a view of Lake Erie had a premium of 90%[15] and 56%.[16]

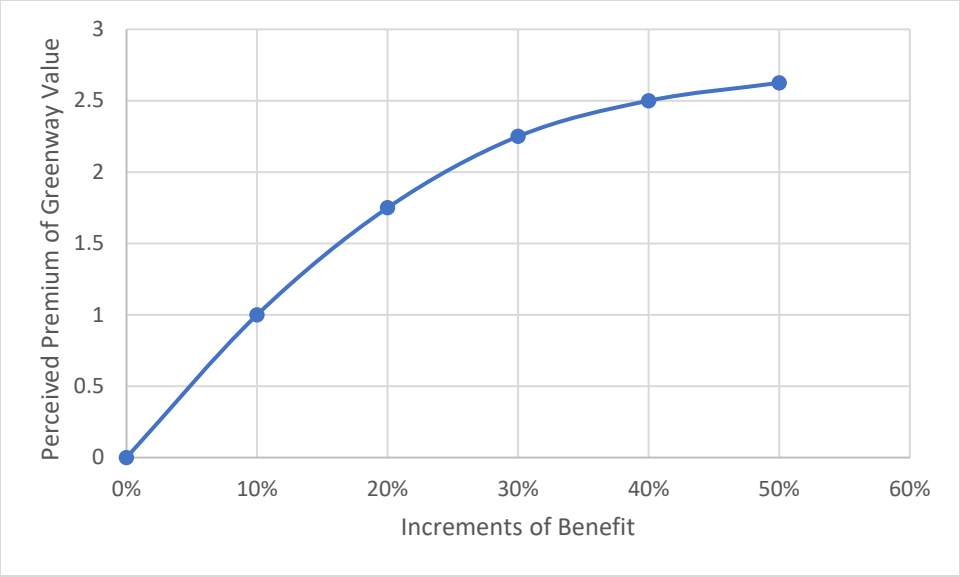
It appears reasonable to conject that similar large premiums to those reported at Bellingham and Cuyahoga County apply to properties with a water view in the LID. Further, given the fixed supply of water view properties it seems likely that premiums will rise even higher in the future.

A consequence of water premiums of this magnitude is likely to be a diminished marginal valuation of the additional units of benefit premium that may be anticipated from the new greenway.

The exposition of this principle is enshrined in Prospect Theory which was first articulated in 1979[17]. Its influence has been extensive and profound. It has been empirically validated in numerous contexts, and the theory is now widely accepted as being unusually robust in its ability to predict outcomes in human decision-making.

Since the article describing Prospect Theory was published, it has been one of the three most cited papers in the Economics literature; it was a foundation for the evolution of behavioral economics, which has transformed the economics discipline; and its authors (who were psychologists) received the Nobel Prize for economics in 2002.

One of Prospect Theory's principles is that each additional increment of benefit has a smaller impact on perceived value (premium) than the equal increment preceding it. The concave value function expressing this phenomenon is shown below:



The curve shows that the perceived value of each 10% increase in benefit is lower than the perceived value of the previous increment of benefit. For example, the increase in benefit from (say) 40% to 50% is perceived to be much less valuable than the increase from 0% to 10%. One of the authors of Prospect Theory used the following analogies to illustrate the point:

> Turning on a weak light has a large impact in a dark room. The same increment of light may be undetectable in a brightly illuminated room. Similarly, the subjective difference between $900 and $1,000 is much smaller that the difference between $100 and $200 (p. 282).[18]

In the context of the LID, Prospect Theory predicts that the incremental effect of the new "park improvements" on the value of properties which already have a large premium stemming from their view of the water is likely to be very small or perhaps non-existent.

Concluding Comments.

My brief was to evaluate whether the Appraiser properly applied my work in his study and whether the benefit areas and assigned special benefits are supportable or speculative. My evaluation has relied on secondary sources, primarily the Appraiser's report. I have not had the opportunity to visit the LID site.

The Appraiser appears to rely on my work to justify the assignment of increment increases of 0.5% to 4%. Presumably, the credibility of his judgements is enhanced by the suggestion that they have a scientific basis, rather than relying on his expertise, experience, judgement and intuition. However, the Appraiser has misinterpreted and/or misapplied eight dimensions of my work:

- The Appraiser did not have access to the recent updated findings of my original work, because their publication in the scientific literature occurred only recently after he had completed his study.

- Both the 2001 and 2020 JLR reviews pertained to residential dwellings, predominantly to single-family homes. They did not relate to commercial properties such as high-rise office buildings, retail uses, hotels et al. The Appraiser inappropriately extended the reviews' findings to all properties in the LID.
- The LID "park improvements" manifest the characteristics of a parkway, not a park. My JLR review cited by the Appraiser related to the impact of *parks* on property values. It is inappropriate to apply the findings to parkways, since they are a qualitatively different amenity.
- My review indicated most of a park's impact occurs within a 500-foot range. The Appraiser's measure of distance to which impact of the LID "park improvements" extended was three blocks, which a network analysis showed was significantly further than 500 feet.
- The conclusion from the JLR reviews that often a small increment of impact extended out to 2,000 feet was derived from "community parks." The enhanced array of amenities included in community parks accounts for them often adding a small increment of value to properties within 2,000 feet. The proposed "park improvements" in the LID do not incorporate such an array of amenities, so the 2,000-feet distance has no merit in the context of the LID.
- Even if the 2,000-foot metric had merit, where it is applied to measure distances from the "park improvements" using network analysis which is the measure used in the scientific literature, the geographic area of the LID is substantially smaller than the Appraiser shows.
- The Appraiser inappropriately adapted the Park Quality Scale that was developed for parks. He used different ratings and failed to relate them to the descriptive characteristics of parkways; used blocks rather than network feet as a distance measure; inappropriately extended the impacted distance to 12 blocks; and created "green premium" percentages that lacked any scientific foundation.
- The Appraiser's treatment of "nuisances" does not appear to consider the disamenity value of either loss of parking or additional congestion accruing from the net increase in visitors that he projects will occur.
- The perceived benefits emanating from proximity to the "park improvements" are likely to be relatively small on properties that already enjoy large premiums attributable to high-quality water views. The Appraiser does not appear to consider the diminishing marginal value of additional amenity benefits he assumes will accrue on those properties.

The Appraiser's reliance on judgment rather than on empirical evidence is evident throughout the narrative, since his critical decisions relating to premiums are frequently preceded by the word "reasonable." Consensus as to what constitutes "reasonable" is much more difficult to obtain within any given population than when there is empirical verification.

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Appendix 1

Extracted from *The Impact on Property Values of Parks, Trails, Golf Courses and Water Amenities*

Government agencies usually provide the additional level of service which is paid for by special assessment districts, but in some large cities it has been initiated by business leaders and such areas are termed business improvement districts (BIDs). There are more than 1,000 BIDs in the United States and Canada. These districts frequently elect their own boards, which take responsibility for the annual budget, hire staff, let contracts, and generally oversee operations. Much of their effort goes into cleaning up, landscaping, maintaining trees and flowers, and enhancing security. Bryant Park, one of the country's great urban park success stories, is the result of a BID. Exhibit 8-2 briefly describes how the BID worked.[13-15]

Exhibit 8-2

Using a Business Improvement District to Resuscitate Bryant Park[13-15]

In less than 15 years, Bryant Park went from a textbook example of an urban park gone bad to an urban treasure that plays a strong role in the revitalization of Midtown New York City and especially 42nd Street. Bryant Park, beside the New York Public Library, was a neglected, vandalized facility that by the late 1970s had become a haven for drug dealers in the city of New York and was widely referred to as "Needle Park." A business improvement district was formed to maintain the eight-acre park and make ongoing park improvements. The park has been restored with tall shade trees, lush green grass, flower beds, pagodas, and a thriving restaurant, and is now considered a model park. At its summer peak, there are 55 employees working in Bryant Park in security, sanitation, gardening, and special events, all of them work for the Bryant Park Restoration Corporation, which is a nonprofit private management company supported by the Rockefeller Brothers Fund and a cooperative business improvement district of neighboring property owners. On some days, the park attracts more than 4,000 office workers and tourists, and more than 10,000 people attend some special events.

The city paid one-third of the $18 million restoration costs, and foundations, philanthropists, and surrounding businesses financed the rest through the business improvement district. The businesses assess themselves approximately 33% of Bryant Park's $2 million annual maintenance bill, while the remainder of the bill is raised in rental and concession fees from restaurants (33%) and special events (33%) held in the park. Businesses recognized that property values and, hence, lease rentals, were closely tied to conditions in the park.

Rents in nearby buildings increased dramatically after the park was redesigned and secured. Results of a 2003 analysis of the impact of the renovations on office buildings bordering Bryant Park are shown in the following table. The rents increased by between 114% and 225%. A second table shown below confirms that other submarkets within a half-mile of Bryant Park also experienced rental increases over this period, but they were substantially less than those shown around the park. Owners of the properties around Bryant Park also reported that the quality of tenants improved, that there was reduced downtime between leases, and the buildings' credit profiles and market values increased.

To a primary organizer of the Bryant Park effort, the lesson was clear: “If building owners and the agents help protect urban open space, they will be more than paid back for their efforts, both in increased occupancy rates and in increased rent–all because their building has this attractive new front yard.”

Exhibit 8-2 continued
Changes in Per Square Foot Rentals in Four Buildings Facing Bryant Park 1990-2002

	1990	2002	Percentage Increase
Grace Building	$29.50	$49	114%
Beaux Arts Building	$18	$60	225%
London Fog Building	$20	$45	125%
1065 Avenue of the Americas	$20	$50	150%

Rental Changes in Comparable Buildings in Surrounding Submarkets of New York City

Grand Central	55%
Times Square	67%
Penn Plaza/Garment District	73%

Following the success of Bryant Park, the Central Park Conservancy in New York City suggested a similar model for assisting with the funding needed to maintain Central Park. The Conservancy had accepted responsibility for most of the park’s maintenance. Its annual budget for this task was over $20 million, and it was concerned that the park’s needs were “increasing beyond the capability of private philanthropy.” Accordingly, the chairman of the Conservancy’s Board stated:

Our concept for the future is to empower, by statute, all neighborhoods in the city, if they choose to do so, to support their local open space with a further revenue stream. We propose park enhancement districts similar to the business improvement districts that are improving the Grand Central area, Bryant Park and many other neighborhoods.

Each neighborhood would be enabled voluntarily to organize itself, decide whether to impose a small surcharge on its local real estate to supplement city support and private philanthropy, set the amount of the surcharge and then use it for its own park, playground or other open space. (p 14)[16]

A study of the impact of Hudson River Park on proximate property values concluded: “Up to 20% of the value of properties within three blocks of the Park is attributable to the Park.” This led to a recommendation:

To establish a Business Improvement District for the Hudson River Park, through which adjacent property owners would be assessed a fee and the funds dedicated specifically to the maintenance and programming of the Park...The principle of assessing neighboring property owners seems

sound, as these landowners benefit most from the added value of the Park and stand to lose most if the Park were to fall into disrepair.[17]

Other downtown parks that have revitalized surrounding property values include:

- The $50 million renovation of the 2.5-acre Campus Martius Park in the heart of downtown Detroit undertaken by a nonprofit coalition of business and civic leaders to celebrate the 300th anniversary of the city of Detroit. Its renovation stimulated over $500 million of new property investment in the adjacent neighborhood.[18]
- Discovery Green in downtown Houston was a 12-acre park built at a cost of around $70 million by a nonprofit that also operates it. Its impact on the assessed values of surrounding property is shown in Exhibit 8-3. In the four-year period from before the Park was announced in 2005 to when it was completed in 2008, the assessed values of property abutting it increased by 51%.
- Three park sites totaling 18.5 acres, anchor redevelopment of the 36-acre Hemisfair site in downtown San Antonio: 4-acre Yanaguana Garden, costing $10 million which opened in 2015; 9-acre Civic Park, estimated at $60 million; and 5.5-acre Tower Park, estimated at $12.5 million. The Hemisfair Plaza Area Redevelopment Corporation (HPARC) is a 501(c)(iii) charged by the city of San Antonio Council with oversight of the redevelopment. It negotiates ground leases with the commercial, office, retail and hotel elements that surround the parks on the remaining 18.5 acres of the site. These revenues are funneled back into HPARC which also collects the sales taxes accruing from within the site. These funds are used to support future operations on the site. The master plan projects the site will attract $540 million in private investment and generate $13 million in tax revenue annually to local entities.[19]
- **Exhibit 8-3**
  Changes in Assessed Valuations in Response to Discovery Green Park

Year	Average per square foot ($'s)
2005	87.87
2006	102.68
2007	116.77
2008	133.08

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Appendix 2

GIS Map of the LID Using Network Analysis

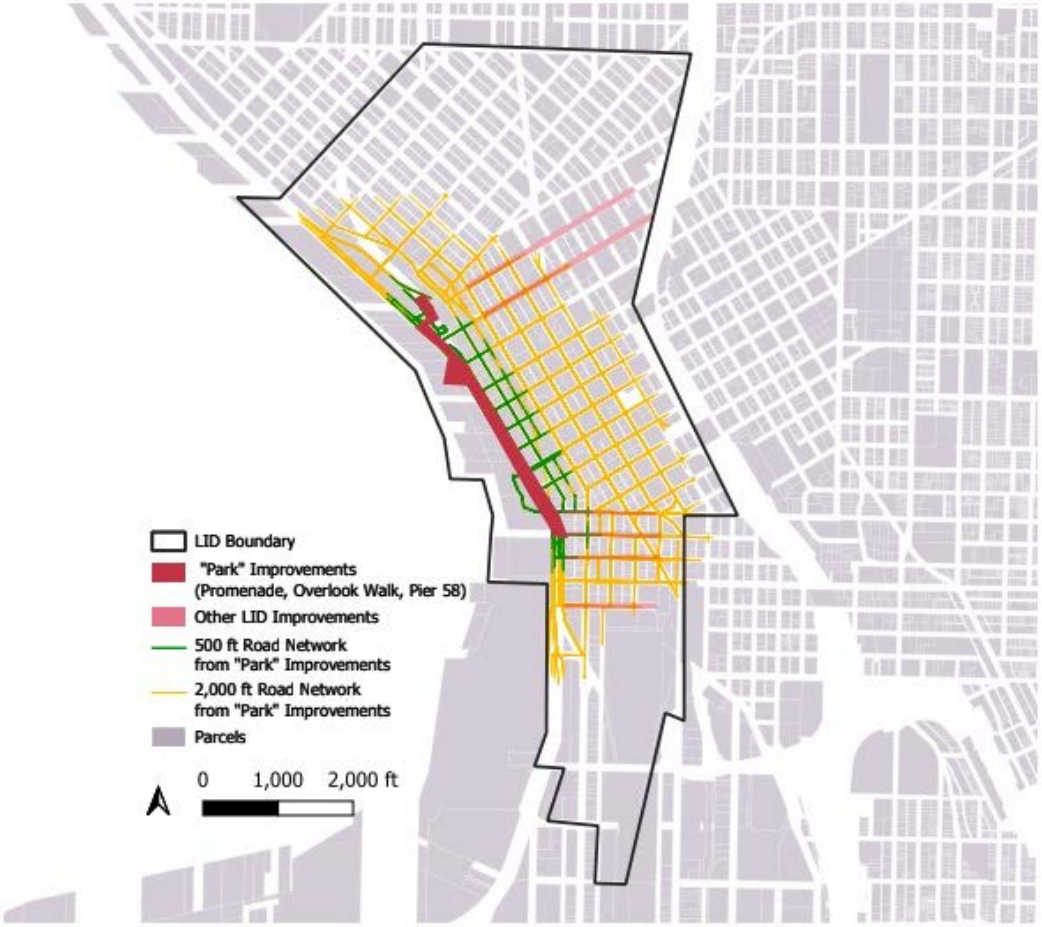

Exhibit 7

Local and Road Improvement Districts Manual

for Washington State

Sixth Edition

MRSC

AMERICAN PUBLIC WORKS ASSOCIATION
APWA
Washington State Chapter

Formation Criteria

1. Encompass only the legally assessable area, or include provisions for voluntary participation by the owners of exempt property.

2. Encompass only the area specially benefitted by the LID project.

3. The total special benefit must approximately equal or exceed the total assessment to be levied.

Need for a Special Benefit Study

A special benefit analysis is recommended when:

1. Uncertainty exists regarding financial feasibility of the proposed project or portions thereof.

2. Uncertainty exists pertaining to the limit of special benefit influence and, therefore, location of the LID boundary.

3. The proposed project includes property with irregularly shaped ownership lines or significant variation in other physical characteristics such as topography, soils, drainage, wetlands and amenities such as view or water frontage.

4. The LID boundary encompasses property with varying intensities of use or zoning designations, variations in use and value created by specific locations, changing land use regulations or highest and best use.

A special benefit analysis is not recommended when:

1. It is acknowledged that the special benefit attributable to the project exceeds the total amount of LID assessment.

2. Ownership lines are reasonably regular or in proportion to each other.

3. There is insignificant variation in intensity of use because of land use regulations, topography, soils, drainage, wetlands or changes in highest and best use due to the LID project.

4. It is not probable that the LID formation, boundary location, property assessments or proportionality of individual assessments will be contested.

Utilize a Special Benefit Analyst to Resolve Issues

1. Make a preliminary investigation at the inception of a proposed LID project and provide an opinion as to economic feasibility of the overall project and/or various components thereof.

2. Recommend an LID boundary which encompasses all specially benefitted property and provides support to withstand appeals to Superior Court.

3. Consider general benefits as well as special benefits; if appropriate, consult with bond counsel and recommend the documentation of underlying assumptions included in the foundation of estimates of special benefit resulting from the LID-funded project. Consideration may also be given to those construction costs related to meeting design standards which may be general benefits, as distinct from construction costs emanating from requirements of the LID project.

4. Prepare a formation special benefit study report and, if requested, make a presentation at the formation hearing to document decisions on both overall project feasibility and boundaries selected as well as providing information to owners of property within the proposed LID.

5. Prepare a special benefit study report for the final assessment roll hearing. If requested, an appearance at the final assessment roll hearing serves to explain and present documentation for the basis and amounts of assessments and establish, for the record, that the assessments are fair, less than the special benefits and in proportion to all other assessments to be levied on property within the LID boundary.

6. Respond to conflicting testimony and cross examination by property owners or their attorneys with unbiased data that contributes to a complete final assessment roll hearing record.

Mathematical Methods

To calculate individual assessments for improvements in an LID where there is a grid work of north-south and east-west streets, the mathematical cost distribution formula called *zone-termini* is often effective. This method of cost distribution is described in RCW 35.44.030 and .040.

Other mathematical formulas include the area (square foot or acre) method and front foot method. Simple utility and street projects in platted residential neighborhoods are usually good candidates for equal assessments per lot. The area method of cost distribution is often preferable for major sewer and water projects and is often applicable to LIDs in commercial areas. Front foot distribution of costs is often preferable for street lighting projects. It is possible to have a need for several different types of assessment units within one district. Assessments for trunk sewers and pump stations as well as assessments for lateral sewers against individual lots are examples.

Mathematical cost distribution formulas such as area, front foot and zone-termini are usually easy to explain to affected property owners and they are always less expensive to calculate than the special benefit analysis method. Sometimes mathematical formulas will not fairly distribute special benefit. When a mathematical formula is not used, a qualified, experienced appraiser should be employed to conduct a special benefit analysis. On projects where there is a mixture of land uses, zoning, or when major topographic changes occur in the district, it is recommended that the special benefit analysis method be used.

Note: It is easy to embrace the thought that if an improvement will cost $400 per foot to construct along the frontage of a certain property, then that property will be assessed $400 per foot. This is a deception! Remember that assessments must be based on the increased value of the property resulting from the improvement, not on the cost of the improvement.

Contributors: Robert J. Macaulay and Ralph Rodriquez

Exhibit 8

RE•SOLVE

GIBBONS & RIELY, PLLC
Real Estate Appraisal, Counseling & Mediation
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Bainbridge, WA 98110-2579

Anthony Gibbons, MAI
Direct Dial 206 909-1046
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January 30, 2020

Jerry Lutz
Perkins Coie
10885 NE Fourth Street, Suite 700
Bellevue, WA 98004-5579

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

Dear Mr. Lutz:

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

Valbridge Appraisal

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

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

Estimated Special Benefit Ranges By Property Class

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

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

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

Conceptual and Methodological Issues

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

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

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

2. Special Benefit

Background

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

> "*Special benefits are those that add value to the remaining property as distinguished from those arising incidentally and enjoyed by the public generally*. WPI 150.07.01

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

> *It should be noted that project enhancement…may be composed of general benefits, special benefits, or a combination of the two. Thus it may be necessary…to allocate the beneficial effects of project enhancement between special and general benefits and to consider only the special benefits in estimating the value of the property in the after situation."*
>
> Real Estate Valuation in Litigation, Page 326, by Jim Eaton MAI.

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

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

> *"The most satisfactory distinction between general and special benefit is that general benefits are those which arise from the fulfillment of the public object…, and special benefits are those which arise from the peculiar relation of the land in question to the public improvement"*
>
> United States v. 2,477.79 Acres of Land, as quoted in Nicols

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

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

3. <u>The Valbridge Study</u>

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

a. Special Benefit Definition and Distinction from General Benefits

The appraisal:

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

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

Beyond the lack of recognition of General Benefits, it is noted that the very nature of the public improvement – a regional park - and the wide LID boundaries described in the report, suggests that entire project could be described as offering almost entirely general benefit. Almost by definition, if $48.1B of real estate is impacted by the project, the benefits provided would seem very general and widespread in nature. The appraisal even uses the term "generally" to discuss assigned Benefits in many areas of the Special Benefit Study[3].

b. Method of Assessment

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

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

measure the difference. Here the appraiser has not met the burden of proof of a value lift, as the latter is concluded and added, not measured as a difference.

c. Before & After Descriptions

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

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

i. Parking

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

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

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

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

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

> *"The Preferred Alternative would permanently remove approximately 57 on-street parking spaces along Alaskan Way, 377 parking spaces that existed in the Alaskan Way Viaduct footprint, 15 on-street spaces on Bell Street, 3 spaces on Union Street, and 1 space on S. Main Street. This loss of*

> *453 on-street parking spaces represents approximately 25 percent of the on-street parking supply in the study area".* Page 44 (pdf) Executive Summary 10/16 Final EIS Waterfront Seattle.

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

ii. Cost

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

i. Timing

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

d. Assessments are not supported by empirical data

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

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

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

e. Assessments include percentage assignments to improvement value

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

An example is provided in a comparison of the preliminary and final LID studies as pertain to one building that was under construction during the interval between receipt of the reports. In the Preliminary version, when the 2 + U tower was under construction, the main site for this building[4], at 1201 Second Avenue, # 197470-0175 was assessed as vacant. As of the date of the Final Study, the building had been largely constructed, although it remains unoccupied. Now with the value of the improvements added, the assessment increased 561% between the Preliminary and Final. See below.

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

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

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

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

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

* proposed; will probably be complete by 2024

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

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

Conclusion

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

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

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

Respectfully submitted,

Anthony Gibbons, MAI

Ref: 20032-Waterfront LID

Exhibit 9

Hyatt Regency	Actual 2019 (1st year)		ABS Prelim		ABS Final		KM Stabilized	
	Total	Ratio	Total	Ratio	Total	Ratio	Total	Ratio
Guestrooms	1,260		1,264		1,260		1,260	
Available Room Nights	459,900		461,360		459,900		459,900	
Occupancy Rate	67.8%		80.0%		80.0%		76.0%	
Occupied Room Nights	311,804		369,088		367,920		349,524	
Average Room Rate	$205		$375		$365		$222	
Room Revenue	$63,849,981	62.8%	$138,408,000	95.7%	$134,290,800	85.5%	$77,676,781	64.9%
Other Revenue	$37,783,144	37.2%	$6,287,760	4.3%	$22,838,050	14.5%	$42,059,064	35.1%
Total Revenue	$101,633,125	100.0%	$144,695,760	100.0%	$157,128,850	100.0%	$119,735,845	100.0%
Operating Expenses	$78,227,964	77.0%	$114,723,601	79.3%	$103,989,799	66.2%	$83,544,115	69.8%
Net Operating Income	$23,405,161	23.0%	$29,972,159	20.7%	$53,139,051	33.8%	$36,191,730	30.2%
Capitalization Rate			7.00%		7.25%		7.31%	
Current Value			$428,174,000		$732,952,000		$494,800,000	
Lift Ratio					0.49%		*0.49%*	
Special Benefit					$3,570,000		*$2,410,030*	
LID Levy					$1,398,805		*$944,303*	

Exhibit 10

Hyatt at Olive 8	Actual 2018		ABS Prelim		ABS Final		KM Stabilized	
	Total	Ratio	Total	Ratio	Total	Ratio	Total	Ratio
Guestrooms	346		346		346		346	
Available Room Nights	126,290		126,290		126,290		126,290	
Occupancy Rate	87.1%		80.0%		80.0%		84.0%	
Occupied Room Nights	110,041		101,032		101,032		106,084	
Average Room Rate	$246		$368		$335		$235	
Room Revenue	$27,115,130	73.7%	$37,220,030	87.7%	$33,845,720	77.8%	$24,957,019	71.7%
Other Revenue	$9,688,366	26.3%	$5,241,420	12.3%	$9,662,280	22.2%	$9,850,187	28.3%
Total Revenue	$36,803,496	100.0%	$42,461,450	100.0%	$43,508,000	100.0%	$34,807,206	100.0%
Operating Expenses	$27,431,267	74.5%	$33,356,642	78.6%	$29,450,509	67.7%	$26,130,704	75.1%
Net Operating Income	$9,372,229	25.5%	$9,104,808	21.4%	$14,057,491	32.3%	$8,676,502	24.9%
Capitalization Rate			7.0%		7.5%		7.3%	
Current Value			$130,069,000		$187,433,000		$118,200,000	
Lift Ratio			1.01%		1.00%		*1.00%*	
Special Benefit			$1,314,000		$1,873,000		*$1,181,161*	
LID Levy			*$515,088*		$733,883		*$463,015*	

Exhibit 11

NORTHWEST
PROPERTY TAX
CONSULTANTS
810 Third Avenue, Suite 228
Seattle, WA 98104

March 13, 2020

Adam Strasser
Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606

Jacob Stillwell
Perkins Coie LLP
10885 NE Fourth Street, Suite 700
Bellevue, WA 98004-5579

RE: Waterfront LID Objection - CWF-0441
Proposed Final Assessment for Parcel No. 768389-0010

Dear Mr. Strasser and Mr. Stillwell:

The Special Benefit calculations are premised on a correct calculation of said benefits to calculate proper assessments. The Macaulay study appears, however, to have incorrectly calculated a number of benefits based on fundamental errors in how it read the underlying data. Specifically, I was engaged to review the Special Benefit calculation of 7 properties (consisting of 13 parcels). Of these 13 parcels, 4 parcels demonstrated data errors, including Helios. The magnitude of these errors ranged from a low estimate of $570,000, high of $959,000 averaging errors of between 12.76% and 16.15%.

From this non-random sample, one questions what can be inferred from the population of parcels in the study itself. As the sample is not truly random, typical statistical methods cannot be brought to bear (pretending the sample were random one would note the sample means and standard deviations would indicate the population's mean error is greater than the 5% threshold discussed repeatedly in testimony).

Upon receipt of the spreadsheet calculating the value of Helios it was observed Mr. Macaulay had used an incorrect number of units. Per publicly available Assessor's data, the unit mix and breakout is as follows with Mr. Macaulay's values on the right:

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Seattle, WA 98104

Account Number	768389-0000
Property Name	THE CHARTER HOTEL & HELIOS
Property Address	206 PINE ST

INCOME APPROACH:

Unit Type	Number or Area
Sleeping Room	0
Open one-bed	0
Studio	156
One-bed, one-bath	179
Two bed, one-bath	0
Two bed, two-bath	63
Three-bed, one-bath	0
Three-bed, two-bath	0
Three-bed, three-bath	0
Four-bed	0
Five-bed	0
Commercial (Triple net rent)	4,163
Miscellaneous Income (incl. parking)	
Moorage Income	0

	Units
Studio	100
1-bedroom	148
2-bedroom	150
3-bedroom	
Total apartments	398

Figure 1 Assessor income approach parameters (2018 Assessed Value) compared to Macaulay spreadsheet

Mr. Macaulay's unit mix (Figure 1, right) generates the following spread of values (reconciled in the final Special Benefit Study) with the Before LID and Special Benefit values highlighted:

Special Benefit Summary							
	Land						
	Per SF	**Total**	**Improved**	**% Change**	**Total Estimated Value**	**Special Benefit**	**% Change**
Without LID	$1,800.00	$35,820,000	$263,064,000	N/A	$298,884,000	N/A	N/A
With LID							
Scenario A1	$1,836.00	$36,537,000	$267,638,000	1.74%	$304,175,000	$5,291,000	1.77%
Scenario A2	$1,836.00	$36,537,000	$269,150,000	2.31%	$305,687,000	$6,803,000	2.28%
Scenario B1	$1,836.00	$36,537,000	$269,914,000	2.60%	$306,451,000	$7,567,000	2.53%
Scenario B2	$1,836.00	$36,537,000	$266,842,000	1.44%	$303,379,000	$4,495,000	1.50%
Percent change in land value	2.00%		$268,386,000	2.02%			

Figure 2 Macaulay calculations with incorrect unit mix

The difference this incorrect unit allocation makes is large. By changing nothing aside from the unit mix to reflect the units in the building, one derives substantially reduced numbers with the changes shown here:

Special Benefit Summary							
	Land						
	Per SF	**Total**	**Improved**	**% Change**	**Total Estimated Value**	**Special Benefit**	**% Change**
Without LID	$1,800.00	$35,820,000	$225,215,000	N/A	$261,035,000	N/A	N/A
With LID							
Scenario A1	$1,836.00	$36,537,000	$229,126,000	1.74%	$265,663,000	$4,628,000	1.77%
Scenario A2	$1,836.00	$36,537,000	$230,449,000	2.32%	$266,986,000	$5,951,000	2.28%
Scenario B1	$1,836.00	$36,537,000	$231,106,000	2.62%	$267,643,000	$6,608,000	2.53%
Scenario B2	$1,836.00	$36,537,000	$228,423,000	1.42%	$264,960,000	$3,925,000	1.50%
Percent change in land value	2.00%		$229,776,000	2.03%			

Figure 3 Macaulay calculations with corrected unit mix

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810 Third Avenue, Suite 228
Seattle, WA 98104

As illustrated, the Special Benefit calculated range is reduced from $4,495,000-$7,567,000 to $3,925,0000-$6,608,000; on the whole indicating a reduction of $761,000 on average.

Mr. Macaulay's publicly documented Special Benefit value is derived at 1.92% of his Before LID value. Using the same (within the range) consideration the Before LID, After LID, and Special Benefit would be correctly calculated at:

Before LID	After LID	Special Benefit
$261,035,000	$266,038,000	$5,003,000

Respectfully submitted,

Benjamin Scott

Exhibit 12

NORTHWEST
PROPERTY TAX
CONSULTANTS
810 Third Avenue, Suite 228
Seattle, WA 98104

March 13, 2020

Michael Arnette
221 Yale Avenue North, Suite 400
Seattle, WA 98109

Jacob Stillwell
Perkins Coie LLP
10885 NE Fourth Street, Suite 700
Bellevue, WA 98004-5579

RE: Waterfront LID Objection - CWF-0421
Proposed Final Assessment for Parcels No. 197470-0175, -0190, and -0210

Dear Mr. Arnette and Mr. Stillwell:

The Special Benefit calculations are premised on a correct calculation of said benefits to calculate proper assessments. The Macaulay study appears, however, to have incorrectly calculated a number of benefits based on fundamental errors in how it read the underlying data. Specifically, I was engaged to review the Special Benefit calculation of 7 properties (consisting of 13 parcels). Of these 13 parcels, 4 parcels demonstrated data errors, including 2+U. The magnitude of these errors ranged from a low estimate of $570,000, high of $959,000 averaging errors of between 12.76% and 16.15%.

From this non-random sample, one questions what can be inferred from the population of parcels in the study itself. As the sample is not truly random, typical statistical methods cannot be brought to bear (pretending the sample were random one would note the sample means and standard deviations would indicate the population's mean error is greater than the 5% threshold discussed repeatedly in testimony).

After the final Special Benefit Study report suggested the assessment failed to deduct the two land parcels (197470-0190 and 197470-0210) from the total value chosen by Mr. Macaulay, we were supplied the spreadsheet used to value 2+U. This confirmed this suspicion.

As background, the 2+U property was developed spanning 3 parcels, as illustrated in Figure 1. The Assessor has valued all three parcels as part of a single, economic unit (illustrated by the Property Name data in the two land parcels, Figure 2). This means an income approach valuation includes the value of the underlying land (across all three parcels) i.e., parcel 197470-0175 is valued as the total value *minus* the values of parcels 197470-0190 and -0210.

This is summarized in the following table:

Parcel	Address	Before LID	After LID		Special Benefit
1974700175	1201 2ND AVE	$591,082,000	$595,195,000	A	$4,113,000
1974700190	1206 1ST AVE	$22,977,000	$23,437,000	B	$460,000
1974700210	116 SENECA ST	$8,991,000	$9,171,000	C	$180,000
Proper Allocation to 1974700175:		$559,114,000	$562,587,000	D = A - B - C	$3,473,000

NORTHWEST
PROPERTY TAX
CONSULTANTS
810 Third Avenue, Suite 228
Seattle, WA 98104

A signifies the total value derived by Mr. Macaulay's analysis, then wholly attributed to parcel 197470-0175.
B and C report the values of the other two parcels.
A correct allocation would assign value D to 197470-0175 (total value less B+C).

Respectfully submitted,

Benjamin Scott

Figure 1 King County IMAP aerial imagery of parcels while under development

Parcel	197470-0190
Name	2ND AVENUE REAL ESTATE INVE
Site Address	
Geo Area	30-100
Spec Area	280-120
Property Name	2+U Building (imp data on -0175)

Parcel	197470-0210
Name	2ND AVENUE REAL ESTATE INVE
Site Address	1200 1ST AVE 98101
Geo Area	30-100
Spec Area	280-120
Property Name	2+U Building (imp data on -0175)

Figure 2 Assessor Parcel Data ("imp data on -0175") indicating both parcels are part of an economic unit ("larger parcel")

Exhibit 13

The Honorable John R. Ruhl

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

255 SOUTH KING STREET LIMITED PARTNERSHIP, et al., Plaintiffs, vs. CITY OF SEATTLE, a Washington municipal corporation, Defendant. EUGENE A. BURRUS and LEAH S. BURRUS, et al., Plaintiffs, vs. CITY OF SEATTLE, a Washington municipal corporation, Defendant.	NO. 19-2-05733-5 SEA (Consolidate with NO. 19-2-08787-1 SEA) DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' THIRD SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: City of Seattle, Defendant;

AND TO: Mark S. Filipini and Christina A. Elles, Counsel for Defendant;

AND TO: Engel Lee, City of Seattle, Assistant City Attorney.

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and Mr. Barash.

INTERROGATORY NO. 38: Identify each modification to the plans and specifications referenced in the following quote from City of Seattle Ordinance 125760, Section 3: "[t]he LID Improvements shall be in accordance with plans and specifications prepared by the Director of the OWCP, on behalf of the Director of Transportation of the Seattle Department of Transportation, and on file in the City Clerk's office," which has occurred since January 28, 2019.

ANSWER: The City incorporates by reference its objections and answer to Interrogatory No. 36. The City further objects to this Interrogatory as vague and ambiguous because of the undefined term "modification." Finally, the City also objects to this Interrogatory as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, to the extent it purports to require the City to identify "each modification," regardless of the significance of the modification, to the plans and specifications for the Waterfront LID Improvements. The City will interpret "modification" to mean substantive modifications that change the conformed sets of plans and specifications for each Waterfront LID Improvement. Subject to and without waiver of its stated objections, the City answers: none.

INTERROGATORY NO. 39: Identify the date and effect of each modification to the plans and specifications identified in Your response to Interrogatory No. 38.

ANSWER: The City incorporates by reference its objections and answer to Interrogatory No. 36. Subject to and without waiver of its stated objections, the City answers: none.

INTERROGATORY NO. 40: Identify the plans and specifications for the Waterfront LID Improvements for the Central Waterfront Improvement Program upon which the "final assessment roll for the Local Improvement District No. 6751 ("Waterfront LID")" is based.

ANSWER: The City incorporates by reference its objections and answer to Interrogatory No. 36. The City further objects to this Interrogatory to the extent it relies upon a legal conclusion or assumes facts not in the evidence, to the extent it assumes the final assessment roll for the Waterfront LID requires prior filing of technical "plans and specifications" for the Waterfront

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LID Improvements. Subject to and without waiver of its stated objections, the City answers: none.

REQUESTS FOR PRODUCTION

Pursuant to Washington Civil Rules 26 and 34, Plaintiffs request that Defendant produce for inspection and copying by Plaintiffs, all documents within the scope of each Request for Production. The documents should be produced in the form and state as they are kept in the usual course of business of the Person, corporation or entity which currently has possession, custody or control of the documents. Production must be made to the office of Plaintiffs' counsel, Schlemlein Fick & Scruggs, located at 66 S. Hanford St., Suite 300, Seattle, Washington, 98134 within thirty (30) days after receipt hereof.

The phrase "possession, custody or control" extends to any documents in the possession, custody or control of Defendant, or any agent, representative, accountant, or attorney of the Defendant. A document or thing is deemed to be in the possession, custody or control of Defendant if it is in any of the Defendant's physical custody or Defendant: (a) owns such a document in whole or in part; (b) has a right by contract, law, or otherwise to use, inspect, examine or copy such document on any terms; (c) has an understanding, express or implied, that they may use, inspect, examine or copy such document on any terms; or (d) can, as a practical matter, examine or copy such documents.

If a claim of privilege is asserted to the production of any document requested below, state as to each document the following information:

(a) The specific privilege claimed;

(b) A precise statement of the facts upon which such claim of privilege is based;

(c) The following information as to each purportedly privileged document:

(1) Its nature: e.g., letter, memorandum, photograph, tape, etc.;

(2) The date it was prepared;

(3) The date it bears;

(4) The date it was sent;

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K&L GATES LLP

By *s/Mark S. Filipini*
Mark S Filipini, WSBA #32501
mark.filipini@klgates.com
s/*Christina A. Elles*
Christina A Elles, WSBA #51594
christina.elles@klgates.com

Attorneys for Defendant City of Seattle

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ATTORNEY CERTIFICATION

The undersigned attorneys for Defendant have read the foregoing Plaintiffs' Third Set of Interrogatories and Requests for Production of Documents to Defendant, and Answers and Responses thereto, and states that they are in compliance with CR 26(g).

DATED this 17th day of January, 2020.

K&L GATES, LLP

By: s/Mark S. Filipini
Mark S. Filipini, WSBA # 32501
Christina A. Elles, WSBA # 51594
Attorneys for Defendant City of Seattle

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Exhibit 14

THE HONORABLE JOHN R. RUHL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

255 SOUTH KING STREET LIMITED PARTNERSHIP, et al.,, Plaintiffs, v. CITY OF SEATTLE, a Washington municipal corporation,, Defendant. EUGENE A. BURRUS and LEAH S. BURRUS, et al., Plaintiffs, v. CITY OF SEATTLE, a Washington municipal corporation, Defendant.	No.: 19-2-05733-5 SEA (CONSOLIDATED WITH NO. 19-2-08787-1 SEA) DEFENDANT'S OBJECTIONS, ANSWERS AND RESPONSES TO PLAINTIFFS' FOURTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT

TO: City of Seattle, Defendant;

AND TO: Mark S. Filipini and Christina A. Elles, Counsel for Defendant;

AND TO: Engel Lee, City of Seattle, Assistant City Attorney.

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If Plaintiffs disagree with the City's approach in responding to this Interrogatory, the City requests an opportunity to meet and confer.

Subject to and without waiver of its stated objections, the design, plans, specifications and construction documents are complete for the Promenade. Overlook Walk, Pioneer Square Street Improvements, Pike/Pine Streetscape Improvements, and Pier 58/Waterfront Park have not yet reached 100% design. Union Street Pedestrian Connection has reached 100% design but it has not yet been put out to bid. .

INTERROGATORY NO. 50: For each Waterfront LID Improvement, identify when the lead agency will complete all (1) designs, (2) plans, (3) agency reviews, (4) specifications, and (5) construction documents.

ANSWER: The City incorporates by reference its objections and answer to Interrogatory No. 49. The City also objects to this Interrogatory as unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks dates when the City will complete *all* designs, plans, agency reviews, specifications, and construction documents. The design and construction of the Waterfront LID Improvements is a complex process that will take several years to complete, and the timelines for completion of all designs, plans, agency reviews, specifications, and construction documents are still in process and subject to change. For these reasons, the City will respond to this Interrogatory with general estimates of when the lead agency will complete the designs, plans, agency reviews, specifications, and construction documents for each Waterfront LID Improvement. Finally, the City objects to this Interrogatory as vague and ambiguous due to the undefined term "lead agency." For the purposes of answering this Interrogatory, the City assumes "lead agency" will have the same meaning as "lead agency" in WAC 197-11-758.

Subject to and without waiver of its stated objections, the designs, plans, specifications, and construction documents are complete for the Promenade. The City is investigating when it estimates it will complete all designs, plans, agency reviews, specifications, and construction

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documents for the remaining Waterfront LID Improvements and will update this Answer accordingly. In addition, pursuant to CR 33(c), the City will search for and may produce non-privileged Documents from which Plaintiffs may ascertain responsive information.

INTERROGATORY NO. 51: For each Waterfront LID Improvement, identify each condition precedent that might impact the lead agency's ability to complete all (1) designs, (2) plans, (3) agency reviews, (4) specifications, and (5) construction documents according the above-identified schedule.

ANSWER: The City incorporates by reference its objections to Interrogatory Nos. 49 and 50. The City also objects to this Interrogatory to the extent it relies upon a legal conclusion or assumes facts not in the evidence, to the extent it assumes the City is required to complete all designs, plans, agency reviews, specifications, and construction documents to the above-identified schedule. Further, the City objects to this Interrogatory as vague and ambiguous because of the undefined term "condition precedent." For the purposes of answering this Interrogatory, the City will interpret "condition precedent" to mean commitments or constraints, as well as an event, condition, or approval that must occur in order to complete all designs, plans, agency reviews, specifications, and construction documents. Lastly, the City objects to this Interrogatory as unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks_each "condition precedent[s] that might impact the lead agency's ability to complete all (1) designs, (2) plans, (3) agency reviews, (4) specifications, and (5) construction documents according the above-identified schedule[,]" regardless of the significance (or lack thereof) of the condition precedent or impact to the lead agency.

Subject to and without waiver of its stated objections, the City is investigating the "condition precedent[s] that might impact the lead agency's ability to complete all (1) designs, (2) plans, (3) agency reviews, (4) specifications, and (5) construction documents according the above-identified schedule" and will update this Answer accordingly. In addition, pursuant to

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encompass "any and all Documents" related to Interrogatory Nos. 52-53, regardless of the significance of the Document (or lack thereof) to the claims and defenses in this matter. Subject to and without waiver of its stated objections, the City will search for and produce responsive, non-privileged Documents.

DATED this 23rd day of January, 2020.

K&L GATES LLP

By *s/Mark S. Filipini*
Mark S Filipini, WSBA #32501
mark.filipini@klgates.com
s/*Christina A. Elles*
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Exhibit 15

From: Macik, Jill <Jill.Macik@seattle.gov>
Sent: Tuesday, March 10, 2020 9:09 AM
To: Arber, Laura M (DFW)
Subject: RE: HPA Application Received for City of Seattle Waterfront Park and Pier 63
Reconstruction Project

Hi Laura,

Apologies for my delay in responding. Can you please place the COS Waterfront Park and Pier 63
Reconstruction Project on a temporary hold until an interagency meeting is held and 60% plans are
provided to WDFW?

Thanks,

Jill Macik
O: 206.684.0602 | F: 206.615.1237

From: Arber, Laura M (DFW) <Laura.Arber@dfw.wa.gov>
Sent: Monday, March 09, 2020 10:36 AM
To: Macik, Jill <Jill.Macik@seattle.gov>
Subject: RE: HPA Application Received for City of Seattle Waterfront Park and Pier 63 Reconstruction
Project

CAUTION: External Email
Hi Jill,

Can you please respond to this email with a request to place the COS Waterfront Park and Pier 63
Reconstruction project on a temporary hold, until an interagency meeting is held and 60% design plans
are submitted and approved by WDFW?

Let me know if you have any questions.

Hope you enjoy the beautiful sunshine today.

Kind regards,

Laura Arber
Washington Dept. of Fish and Wildlife | Marine Habitat Biologist | 16018 Mill Creek Blvd, Mill Creek, WA 98012 |
p. (425) 379-2306 | Laura.Arber@dfw.wa.gov | Hours M-F. 8:30 - 3:00

From: Macik, Jill <Jill.Macik@seattle.gov>
Sent: Tuesday, March 3, 2020 3:07 PM
To: Arber, Laura M (DFW) <Laura.Arber@dfw.wa.gov>
Cc: Perkowski, Ben <Ben.Perkowski@seattle.gov>
Subject: RE: HPA Application Received for City of Seattle Waterfront Park and Pier 63 Reconstruction
Project

Hi Laura,

Thank you for your thoughtful response to our application. I agree that an interagency/tribal meeting
would be useful, and I've started some internal conversations on that issue. Regarding the needed level
of detail, the project is scheduled to reach 60% design in April, and I expect I will be able to provide you
the information you need at that time.

I will keep you and Ben informed as we look to having a meeting.

Thank you both,

Jill Macik
O: 206.684.0602 | F: 206.615.1237

From: Arber, Laura M (DFW) <Laura.Arber@dfw.wa.gov>
Sent: Thursday, February 27, 2020 2:02 PM
To: Macik, Jill <Jill.Macik@seattle.gov>
Cc: Perkowski, Ben <Ben.Perkowski@seattle.gov>
Subject: RE: HPA Application Received for City of Seattle Waterfront Park and Pier 63 Reconstruction
Project

CAUTION: External Email
Hi Jill,

I have reviewed the COS Waterfront Park and Pier 63 application submittal and have the following
comments:

I have spoken with Ben Perkowski, and we both think it would be a good idea to have an agency/tribal
meeting once you apply for the shoreline permit. This would allow everyone to review the current plans
and discuss how the project has achieved no net ecological impact.

One particular concern I have is the new piling footprint. It's great to have the creosote piles out, but the
new steel piles have a significant footprint increase on the sea bed, which needs to be mitigated for even if
under overwater coverage.

It would be helpful to go over the mitigation sequencing and a detailed discussion of the impacts and
associated compensatory mitigation. And lastly the plans submitted with the application do not provide
sufficient detail of the proposed work for me to permit. WDFW will need something more along the lines
of permit plans that depict all the work and associated dimensions and materials on the plans. For
example, the plans need to include dimensions, bathymetry, grating calcs, and plans views and cross-
sections of proposed features (e.g. habitat mattresses, habitat Area A, open areas, etc.).

Please feel free to give me a call to discuss and or any questions you may have.

Thank you,

L~

Laura Arber
Washington Dept. of Fish and Wildlife | Marine Habitat Biologist | 16018 Mill Creek Blvd, Mill Creek, WA 98012 |
p. (425) 379-2306 | Laura.Arber@dfw.wa.gov | Hours M-F. 8:30 - 3:00

From: Macik, Jill <Jill.Macik@seattle.gov>
Sent: Wednesday, February 19, 2020 12:03 PM
To: Arber, Laura M (DFW) <Laura.Arber@dfw.wa.gov>
Subject: FW: HPA Application Received for City of Seattle Waterfront Park and Pier 63 Reconstruction
Project

Hi Laura,

I wanted to give you a heads-up that I submitted the city's application today. Please don't hesitate to
call or email if you have questions or need any additional information.

I look forward to working with you on this project.

Thanks,

Jill Macik
O: 206.684.0602 | F: 206.615.1237

From: APPS_DoNotReply@GovOnlineSaas.com <APPS_DoNotReply@GovOnlineSaas.com>
Sent: Wednesday, February 19, 2020 12:01 PM
To: Macik, Jill <Jill.Macik@seattle.gov>
Subject: HPA Application Received for City of Seattle Waterfront Park and Pier 63 Reconstruction Project

CAUTION: External Email
Dear Jill Macik:

Note: Do NOT reply to this email as this email account is not monitored.

1. You have successfully submitted your HPA application to WDFW. If you submitted a Pre-Application, a
biologist will contact you shortly to discuss your project. In this case, please ignore step #2 listed below.

Application ID: 20834
Application Name: Standard Hydraulic Project
Application Status: Submitted - All Components Included
Submitted Date: 2/19/2020 12:00:37 PM

2. If your application is complete we will process it and issue a permit or denial. We will send an email to
you with a copy of the permit or denial. If your application is not complete we will notify you by email.

3. If you are not an APPS registered user, you may wish to register to gain access to edit your

application, submit payment, or simply view application details on the APPS website. If you chose to
create a new account, you can link existing submittals (that included your email address) in APPS directly
to your account from the Application tab by selecting “Link Paper Submission”. If your email address is
recognized, you will be able to click the box next to your name, and then click Associate. Previous
applications will then be fully accessible within your account.

4. If you have any questions about how to use APPS, please contact APPS help center between 8:00 am
and 4:00 pm Monday through Friday at: (360) 902-2422 or APPS.Help@dfw.wa.gov.

Thank you for using APPS!

Regards,

Washington Department of Fish & Wildlife

Exhibit 16

LID Before & After Images

South Main Street
Looking Northwest

Current Condition

No-LID Alternative

With LID Alternative

Marion Street Pedestrian Bridge
Looking Northwest

Current Condition

No-LID Alternative

With LID Alternative

Waterfront Park
Looking Southeast

Current Condition

No-LID Alternative

With LID Alternative (2023)

Waterfront Park
Looking North

Current Condition

No-LID Alternative

With LID Alternative (2023)

Pier 62,63
Looking East

Current Condition

No-LID Alternative

With LID Alternative (2023)

NOTE: Seattle Aquarium building envelope (not design) shown, but will not be funded by LID

Victor Steinbrueck Park
Looking South

Current Condition

No-LID Alternative

With LID Alternative