OBJECTIONS TO PROPOSED FINAL ASSESSMENT FOR WATERFRONT LID

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

PERKINSCOIE

QUESTIONS PRESENTED

1. Is the City's method of assessing the Waterfront LID properties fundamentally flawed because it assigns rather than measures special benefits based on incomparable case studies and misplaced reliance on empirical research? **YES**

2. Do the proposed assessments fail to accurately reflect actual, non-speculative, measurable, and proportionate special benefit conferred on Objectors' properties as a result of the Waterfront LID Improvements? **YES**

CITY'S OBLIGATION

Distribute and assess cost and expense of improvements in accordance with special benefit conferred on each property within the LID. RCW 35.44.010.

Special benefit must be:

- **Appurtenant to specific land**
- **Cannot exceed actual special benefit** enjoyed by that parcel
- **Cannot include general benefits** enjoyed by public at large
- **Must be proportionate** relative to other parcels in the LID
- Special benefit must be **actual, physical, and material**
- Special benefit **cannot be speculative**

Heavens v. King Cty. Rural Library Dist., 66 Wn. 2d 558, 564 (1965).

STANDARD OF REVIEW – CLEAR AND CONVINCING

The proposed assessments are **presumed correct, "unless overcome by clear, cogent and convincing evidence."** This standard is **less deferential** than the heightened presumption of correctness used on judicial appeal because **"applying these elevated standards at the municipal hearing would afford unwarranted deference to a report prepared under contract by a private appraisal firm."**

Hasit, LLC v. City of Edgewood, 179 Wn. App. 917, 949 (2014).

UNPRECEDENTED USE OF LID TO FUND CITY-WIDE IMPROVEMENTS

- Promenade
- Overlook Walk
- Pioneer Square Street Improvements
- Union Street Pedestrian Connection
- Pike/Pine Streetscape Improvements,
- Pier 58/Waterfront Park

***Must Exclude Other Waterfront Improvements, including removal of viaduct**

LID BOUNDARY

Robert J. Macaulay, MAI February 27, 2020

17 A. Well, I think Pier 58, the promenade,
18 the overlook walk, would combine into more park-like
19 amenities than would the Pioneer Square and Pike/Pine
20 corridors.
21 Q. It's those three together?
22 A. They would be the main park-like
23 components that we considered.
24 Q. So when we're drawing boundaries around
25 a park, those are the core park elements that you're

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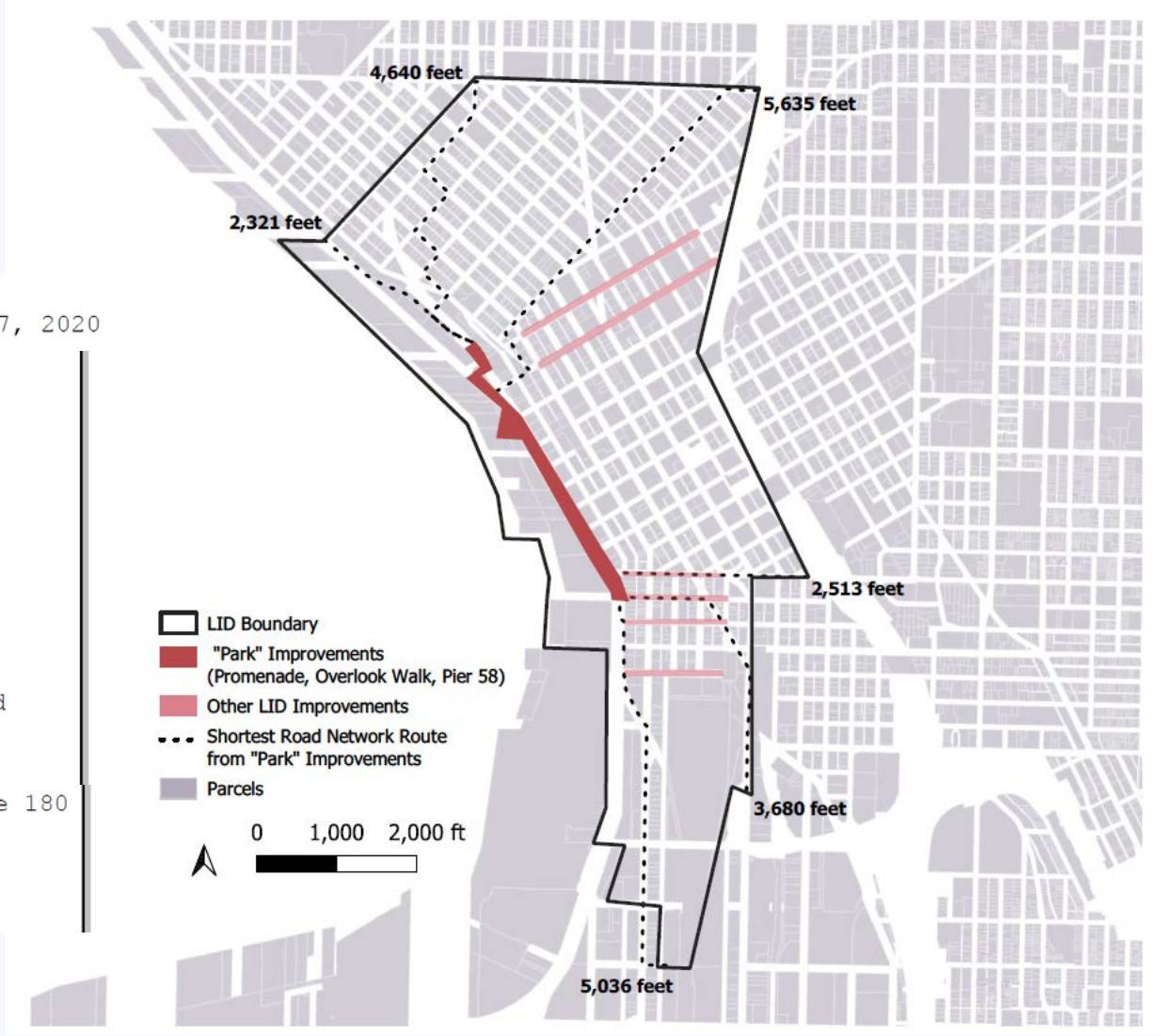
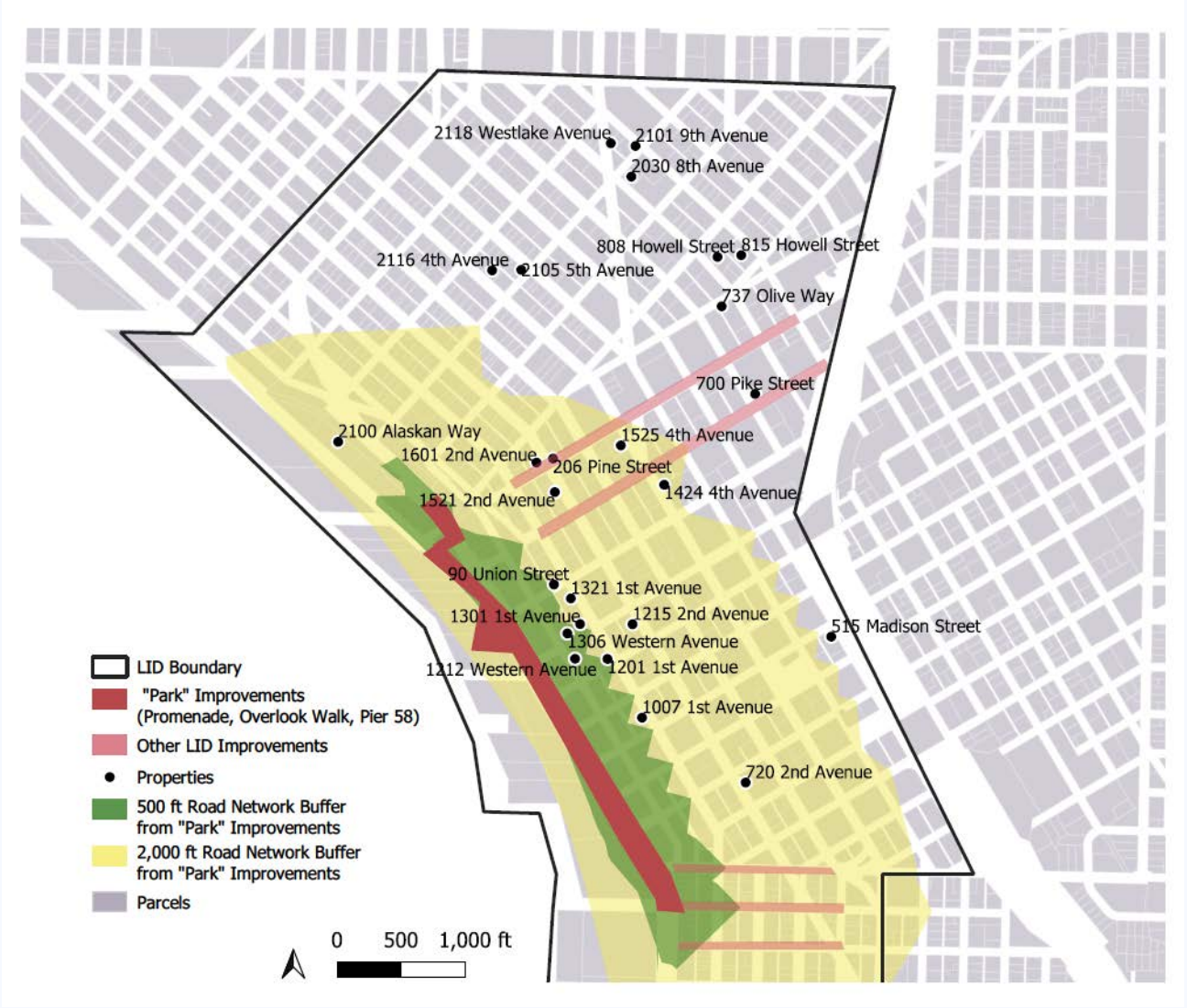
1 thinking of?
2 A. Correct.



OBJECTORS' PROPERTIES

- 29 Appeal Petitions for 31 Parcels.
- Properties comprise over $4.5B worth of real estate in downtown Seattle.
- Total assessments = $21,173,047.
- 8 hotels, 10 apartment complexes, 4 office/retail buildings, 3 individual condos and 1 vacant lot.
- None are appurtenant to the "Park" Improvements.
- Only 1 is within 500 feet of the "Park" Improvements.
- 10 are further than 2,000 feet from the "Park" Improvements (13 parcels).
- A few abut Pike/Pine.



ASSESSMENTS ARE SPECULATIVE—NOT ACTUAL

Assigns special benefits that are **inherently speculative due to the fact that the LID Improvements are not scheduled to be completed until 2024,** and there are a number of intervening factors that could render valuations stale.

Mr. Macaulay **assumed that the improvements would be permitted and built according to designs and construction schedules** he was provided by the City. But the City has acknowledged that design plans, costs, and construction schedules are **subject to change** and subject to discretionary permits. **Experts testified the City's target notice to proceed date to meet the 2024 deadline is likely to be missed.**

Further, material changes to or elimination of Pier 58 or other LID components through environmental review and permitting could materially affect the LID purpose, cost, and completion date. For example, **Pier 58 will require SEPA review, NEPA review and other discretionary permits from a number of federal and state agencies**. If the LID is finalized, the City's **commitment to construction prior to environmental review would violate SMC 25.05.055(B), state, and federal law**. The Hydraulic Project Approval application has been placed on hold because the plans were insufficient for WDFW's review requirements. Delay is likely.

ASSESSMENTS ARE SPECULATIVE—NOT ACTUAL

The assessment is an immediate expense without any concomitant benefit and therefore decreases Objectors' property values.

None of Objectors' properties are in fact experiencing any increase in property value or revenue in anticipation of the LID Improvements and do not expect any increases in the near-term.

- Hotels do not expect an increase in rates or occupancy, due to a primarily business clientele.
- Apartments do not expect an increase in rates or occupancy, because renters do not pay rent for amenities four years in advance and choose location based on proximity to places of employment and other downtown amenities.
- Office buildings do not expect any increases in property value due to an increase in tourism.
- Residential condos do not expect an increase in property value because they already have protected views and adequate access to the waterfront and downtown amenities.

“BEFORE” VALUES ARE INACCURATE AND OVERSTATED

Fails to calculate adjustments to current market values to account for the value of hypothetical improvements assumed to be complete in the “Before” scenario.

Relies on inaccurate market data to value many of the income-producing commercial properties.

- Fails to account for 2-story height restriction for Century Retail property.
- Fails to consider that United Way building has sold all TDRs.
- Used incorrect mix of studio/multi-room units for Helios apartments.
- Used “rack rates” to estimate net operating income for hotels.

ASSESSMENTS ARE ASSIGNED—NOT MEASURED

Arbitrarily "assigns" a special benefit to already faulty "Before" values.

Concludes property value increases that **fall within the margin of error** for appraisers.

This fails to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP") Standards 5 and 6 because the Final Study **does not contain a model structure or allow calibration and testing of that model.**

Robert J. Macaulay, MAI February 27, 2020

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.

ARBITRARY ASSIGNMENTS ARE NOT SUPPORTED

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 principal" 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 city blocks.
- The remaining 25% of the benefit is likely dissipated over a 500- to 2,000-foot range, or 4 to 12 city blocks.

ABS Valuation, Final Special Benefit Study at 83.

- **Improvements are NOT A PARK.**
- **Seattle city blocks are ~300 feet, so 75% of benefit should extended only 1.5 blocks. And 25% should extend only 6.5 blocks.**

ARBITRARY ASSIGNMENTS ARE NOT SUPPORTED

Expert testified that **case studies cited are not an adequate substitute** for matched paired analysis and the scale of those projects when compared with the LID Improvements are **so substantively different that they do not provide useful comparisons.**

HR&A Study also relies on **incomparable data from NYC to project increases in tourism** due to all of the waterfront improvements. And in any case Objectors' witnesses testified that the increase in tourism the City anticipates from the LID Improvements is **not likely to contribute specially, if at all, to the value of their properties**.

ASSESSMENTS OVERSTATED—FAILURE TO CONSIDER GENERAL BENEFITS AND SPECIAL DETRIMENTS

Fails to account for and exclude general benefits accruing from the city-wide LID Improvements.

Fails to consider any potential negative impacts from construction, increased traffic, decreased access to existing businesses and restaurants, decreased parking, or potential increase in crime and sanitation issues due to the City's failure to maintain the park.

At the same time, the Final Study **improperly attributed special benefits from the fact that the "new waterfront amenities will be designated as 'park land',** conveying broader powers to the City regarding upkeep, maintenance and security of the vicinity." Final Study at 8.

ASSESSMENTS OVERSTATED – LITTLE TO NO ADDITIONAL BENEFIT AFTER VIADUCT REMOVAL

Unclear what incremental benefit comes from many of the LID Improvements when compared with projects assumed complete under the "Before" condition (e.g., 2.5" diameter WSDOT trees vs. 4" trees for Promenade). *See In re Schmitz,* 44 Wn.2d 429, 537 (1954) (no special benefit from raising grade of road by 16-18 feet where property owners would have equally benefitted from increase of 9 feet)

No data driven analysis of what real or hypothetical increase in property value was due to pre-existing views or removal of the viaduct. *Cf. Douglass v. Spokane Cty.*, 115 Wn. App. 900 (2003) (no special benefit where property was already connected to sewer service)

Our clients' properties already have convenient access to restaurants, businesses, and the waterfront. Many also have protected views. *Cf. Appeals of Jones*, 52 Wn.2d 143 (1958) (no special benefit where property was already adequately served by existing water main and fire hydrant).

ASSESSMENTS ARE ARBITRARY AND BASED ON FLAWED METHODS

Objectors jointly and respectfully request that the Hearing Examiner find the Final Study flawed and recommend that the Council annul Objectors' assessments or request the Final Study be redone before the assessment is finalized, following completion of discretionary permitting processes for the LID improvements.