

Seattle Waterfront LID Assessment Hearing

Seattle LID Hearing

April 16, 2020



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SEATTLE WATERFRONT LID ASSESSMENT HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken in Seattle, Washington

(ALL PARTICIPANTS APPEARING VIA VIDEOCONFERENCE)

DATE TAKEN: April 16, 2020

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Nancy M. Kottenstette, RPR, CCR 3377

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HEARING EXAMINER VANCIL: Good morning.

We convene for the continuance of the Waterfront LID Assessment Hearing and looking to conclude today the 16th. We have an item for us to begin the day with addressing a motion from objectors and then continuing with objectors' final witnesses.

Can I please have counsel for objectors who will be presenting on the motion and the City identify themselves by name for the record.

MR. NICHOLS: Yes. My name is Clark Nichols. I'm with Perkins Coie, and we represent the objectors.

MR. FILIPINI: And Mark Filipini for the City of Seattle on the motion.

HEARING EXAMINER VANCIL: All right. There was a request for oral argument on the motion. Mr. Nichols, you're presenting? How much time do you need for that?

MR. NICHOLS: Do you have our -- the objectors' motion to exclude the expert testimony of Mr. Macaulay, and I won't go over that because the materials are with you. However, yesterday the City filed an opposition. That's what I would like to respond to today.

1 HEARING EXAMINER VANCIL: And how much
2 time do you need for that?

3 MR. NICHOLS: Less than ten minutes, I
4 believe.

5 HEARING EXAMINER VANCIL: Okay. We'll
6 keep it to ten minutes or less. The City will have
7 the same in rebuttal. Please proceed.

8 MR. NICHOLS: Okay. The issue that's
9 presented by the motion is whether the hearing
10 examiner should find that Mr. Macaulay's mass
11 appraisal and assessment of properties within the
12 Local Improvement District should be excluded under
13 either the Frye standard as applying the methodology
14 that is not generally accepted by the appraisal
15 profession and by Evidence Rule 702 as not being
16 reliable and thus not helpful in making findings of
17 fact with respect to the opinions as to the assessment
18 of properties within the boundaries of the LID.

19 The City has filed this opposition, and that's
20 what I would like to respond to today. The first
21 issue raised by the City and probably the more -- most
22 important issue is Mr. Macaulay's proposed final LID
23 assessments as special benefits to the properties
24 within the LID, are those assessments opinions or
25 fact.

1 In other words, is the standard of
2 admissibility or consideration by the hearing examiner
3 of Mr. Macaulay's proposed final assessments one of
4 opinion testimony or factual testimony? That seems to
5 be the thrust or the main thrust of their opposition,
6 and the cases cited by the City at page 6 of this
7 opposition argues that Mr. Macaulay should be viewed
8 as a fact witness rather than a testifying expert.

9 And those cases that they cite simply do not
10 support their argument. It's a disingenuous argument.
11 The City's argument tees up the question of whether
12 Mr. Macaulay's mass appraisal and proposed final
13 assessments does it constitute opinions or does it
14 constitute facts.

15 I don't want to spend the time on the City's
16 contention -- or too much time on the City's
17 contention, because, of course, appraisals of
18 properties requiring expert in the field and in this
19 case and MAI to apply his judgment and training to
20 reach opinions, and the opinions that Mr. Macaulay
21 reached for the special benefit study is the market
22 value of the properties without the LID improvements,
23 the special benefit or value lift that the LID
24 improvements are projected to make with each property,
25 the appraised value with the LID improvements, and the

1 proposed final LID assessment for each property.

2 Now, it would be disingenuous to constitute
3 those as facts when they are really judgments or
4 opinions by the appraiser. If the hearing examiner
5 concludes that Mr. Macaulay's mass appraisal and
6 special benefit study constitutes opinion testimony,
7 then the question of admissibility becomes focused on
8 whether Mr. Macaulay's proprietary methodology that
9 he -- that has never been validated or peer reviewed
10 by appraisal professionals, whether that methodology
11 is generally accepted by the professional appraisal
12 community, and it is not.

13 There are four highly respected expert
14 appraisers -- Anthony Gibbons, Peter Shorett, John
15 Gordon, and Brian O'Connor -- who have testified that
16 Mr. Macaulay's mass appraisal and assignment of
17 special benefits, rather the measurement of special
18 benefits, is not an acceptable appraisal methodology.

19 Randal Scott has also testified that
20 Mr. Macaulay's methodology does not meet the USPAP
21 standards for mass appraisal. What the City
22 characterizes as a simple difference of opinions of
23 experts, it is, in fact, a rejection by the appraisal
24 community of Mr. Macaulay's methodology.

25 Under the Frye standard, that should resolve

1 the issue of admissibility. His opinions are not
2 admissible and should not be considered under -- by
3 the hearing examiner because they simply are not
4 generally accepted within the relevant professional
5 community.

6 Also under Evidence Rule 702, Mr. Macaulay's
7 opinion should be excluded. Unreliable expert opinion
8 testimony is not helpful to the finder of fact.
9 Objectors' motion identifies the numerous examples of
10 Mr. Macaulay's assignment of what he has opined to be
11 special benefits pursuant to his proprietary, I'll
12 call it, algorithm.

13 It's an arbitrary assignment rather than a
14 measurement of special benefits based on invalid
15 assumptions such as the proximate premium that he
16 attributed to Professor Crompton.

17 Mr. Macaulay, in fact, has no basis for
18 attributing special benefit percentages of .05 percent
19 to 4 percent to properties based on their distance
20 from the waterfront. His percentages are entirely
21 arbitrary, and they're not based on any research or
22 any measurement or any study. He just pulled them out
23 of the air.

24 Finally, the City argues that consideration of
25 objectors' motion is premature, and we have some

1 sympathy for that -- that particular argument. The
2 City requests that consideration of the motion exclude
3 Mr. Macaulay's testimony and special benefit study be
4 postponed until after he testifies in the City's
5 case-in-chief, which is currently scheduled in May.

6 If the hearing examiner prefers to postpone
7 consideration of objectors' motion, we do not object
8 to the postponement request, only that the objectors
9 be given an opportunity to reply after Mr. Macaulay
10 testifies.

11 That is our response.

12 HEARING EXAMINER VANCIL: All right. A
13 couple questions. Objectors are moving to strike the
14 final benefit study as well; is that correct?

15 MR. NICHOLS: That is correct. The
16 opinions expressed in the final benefits study, which
17 is the assessment of the properties.

18 HEARING EXAMINER VANCIL: And so the
19 final special benefit study, you're proposing that
20 that be removed from the record? Mr. Nichols?

21 MR. NICHOLS: I'm contemplating the
22 response to your question, sir. Yes, that if you
23 strike his opinions, you would be striking his special
24 benefit study.

25 HEARING EXAMINER VANCIL: Isn't the

1 opinion of all of the appraisers presented by
2 objectors based on that final study?

3 MR. NICHOLS: No. That there's a
4 difference there, Your Honor, that the testimony of
5 the objectors' appraisers, they focused on the benefit
6 study, not for the truth of the matter asserted by
7 Mr. Macaulay in that study, but to impeach and rebut
8 his opinion testimony. That is the critical
9 difference there. We're not relying upon his findings
10 and his opinions and his speculations.

11 We're merely referring to the special benefit
12 study to reject his opinions. It's not being accepted
13 within the relevant appraisal community and not being
14 reliable.

15 HEARING EXAMINER VANCIL: But you did
16 answer in the affirmative that you are asking that the
17 final benefit study be struck from the record. If
18 it's struck from the record, how do you get around
19 that? You've just indicated that your testimony is
20 based on that, that the testimony was based on
21 references to that document --

22 MR. NICHOLS: Well, I think I
23 explained --

24 HEARING EXAMINER VANCIL: -- from the
25 record.

1 MR. NICHOLS: Well, I think you're
2 making a good point as the hearing examiner. I guess
3 we're going to have to keep the special benefit study
4 in the record so that we can show that it is not
5 credible. Thank you for clarifying that.

6 HEARING EXAMINER VANCIL: And I
7 understand that you have maybe some qualifications
8 around that which we can get to.

9 Has -- have the objectors cited any authority
10 for application of Frye or Evidence Rule 702 in an
11 administrative hearing where the results are
12 recommendation and not a final decision?

13 MR. NICHOLS: We have not, no. We have
14 not. I believe you have the discretion under the
15 Hearing Examiner Rule 2.17(b) to determine whether or
16 not you want to consider his opinion testimony.

17 HEARING EXAMINER VANCIL: Okay. Thank
18 you, Mr. Nichols.

19 Mr. Filipini?

20 MR. FILIPINI: Good morning. I will
21 start by saying that I would characterize the main
22 thrust of our opposition that the Hearing Examiner
23 Rule 2.17 is what controls here and not the Frye
24 standard or Evidence Rule 702.

25 And under 2.17(a), evidence is admissible if

1 it's relevant, comes from a reliable source, and has
2 probative value. And I believe that the study, which
3 supports the proposed final assessment role here and
4 Mr. Macaulay's eventual testimony regarding the study,
5 clearly satisfies each of those standards. In fact,
6 the study has been introduced by objectors and all
7 other represented parties.

8 Differing of opinions or arguments as between
9 experts or fact witnesses does not render the study or
10 the testimony regarding it unreliable, frankly, from
11 any source. We expect that after all the evidence
12 comes in that you will make any necessary judgment
13 calls with respect to weighing of the evidence and
14 arguments between the parties.

15 So we don't believe that any party should be
16 weaponizing, I think is the word that I used in the
17 brief, the use of these evidentiary rules and motions
18 to try to preclude a full record from being made here.

19 We want to point out that the experts -- the
20 opinion of the objectors' experts that we've heard,
21 they relied a large degree on speculation at this
22 point as to what ABS Valuation did or did not do,
23 frankly, because we have not yet heard from
24 Mr. Macaulay and his team.

25 And even at times when we have pointed out on

1 cross-examination that the report contradicts what
2 they're saying, they have said, well, that's not the
3 way that we see it. And I'm speaking there
4 specifically to there's three different times that
5 Mr. Gibbons in his testimony on process, when we
6 pointed out that the report says something contrary,
7 he calls those words on a page.

8 So I think we certainly need to hear from
9 Mr. Macaulay and his team as to what they actually
10 did, because, in our view, there is a fair degree of
11 speculation contained in each of the experts' opinions
12 thus far.

13 Our second argument that we raised in our
14 motion is that the -- we'll couch it as an evidentiary
15 motion. It really is trying to litigate the merits of
16 specific objections and ask you to determine -- us to
17 defend and you to determine ultimate questions of fact
18 before it's time to do so.

19 The whole purpose of taking testimony and the
20 arguments from all the parties is toward this goal at
21 the end of the hearing. And it should not be decided
22 via a seven-day motion or in advance of any evidence
23 coming in from the City given how the burdens are --
24 testifying burdens are set up pursuant to the LID
25 statute.

1 Our third argument was that Frye and ER 702
2 are inapplicable here. Again, Hearing Examiner
3 Rule 2.17 controls. We found no prior application out
4 of Frye going back to 1990 in the published decisions
5 of the hearing examiner, nor did we find it applied in
6 another administrative setting.

7 Counsel raised the point that we also are
8 saying that there is a difference between a testifying
9 and fact witness here, and we do believe there is a
10 difference. Mr. Macaulay will be both, which is mixed
11 fact and expert witness. But with respect to the
12 study and his explanation of the study which, again,
13 underlies the -- creates the basis for the special
14 assessments that underlie the role in question, we
15 believe that that is a fact expert role.

16 Just like a testifying physician or in a
17 product liability case, the engineer that comes in and
18 describes what he or she did with respect to the brake
19 system that plaintiffs say failed, even to the extent
20 they explain why they did it and defend themselves,
21 they are generally not considered to be testifying
22 experts covered by Frye or 702 as opposed to if the
23 defendant in that case were to bring in other
24 testimony trying to support what the company did.

25 And we think that, although this is,

1 obviously, a little different, it falls in line with
2 that. To the extent in the motion when we read it, it
3 really does try to keep out the study itself and
4 Mr. Macaulay's testimony with respect to the study. I
5 do anticipate that we'll ask him to opine more
6 generally about his methods and to defend them. At
7 least with respect to the study and what he and his
8 team did for it, we think that that is a fact issue
9 here.

10 And then on 702, again, not applicable. It's
11 a trial court standard. But even if it were, we think
12 that we more than meet that here just on its face and
13 also note that, like all evidentiary rules, there is a
14 concern about having opened the door. Again,
15 objectors and others put the study in. They've asked
16 questions about it and think that they've opened the
17 door for -- even if 702 applied, for our side to
18 explain what they did -- what it is and what they did
19 and its significance.

20 And then also I want to note that the -- and
21 this is just -- this is not necessarily in our motion,
22 but it's something that came to mind as I was
23 listening to counsel. Mr. Gordon is the only expert
24 here for the objectors who actually did an appraisal
25 or appraisals, and that's what's required in the case

1 law to overcome the presumptions in favor of the
2 assessments underlying the role here in the confines
3 of a LID litigation.

4 So I think there's also -- to the extent you
5 wanted to entertain at all the Frye or attack in
6 particular, there is a real question as to whether or
7 not -- at least three of the experts who have done
8 appraisal reviews and other high level valuations
9 without actually conducting the appraisals that would
10 be required here to sustain objections, whether or not
11 that would be valid if we were, indeed, in a Frye
12 hearing, whether or not that would be enough.

13 And then my last point is that just that we
14 did conclude our brief by saying that if you were
15 inclined to find any merit in the motion, we don't
16 think you should, but it's premature at the least.
17 Because, again, we have not had a chance -- it's
18 axiomatic that you -- all parties don't yet know
19 exactly what Mr. Macaulay is going to say or his team
20 or the other witnesses that we're going to call. And
21 so at the very least, you should wait.

22 I don't think that -- I don't see any
23 opportunity for a reply brief in the hearing examiner
24 rules. We would object to the objectors getting
25 another month to come back later and put in a reply

1 brief. They chose the timing of when to file this
2 motion, and to the extent that it were refiled, I
3 would say or ask that it would be refiled after all
4 the evidence comes in.

5 Again, we don't think it has merit. We think
6 it should be denied on its face. But if it were to be
7 refiled, I'm trying to look ahead to a situation
8 where, you know, we only have two days to put on our
9 case and two days for cross and then, hopefully, are
10 not battling a motion to exclude evidence mid that.
11 So if it does come back, we would just ask that you
12 file that after all the evidence comes in. Thank you.

13 HEARING EXAMINER VANCIL: Thank you.

14 Having heard from both parties, I will issue
15 an oral ruling today. Given the timing of the motion
16 in the midst of trying to maintain a remote hearing
17 process for this and other hearings and having had
18 several days dedicated to hearing, I beg the parties'
19 indulgence as I simply go through some notes. This is
20 in no particular order. I will issue an order,
21 though, so that we can proceed with the hearing.

22 Hearing Examiner notes that Mr. Macaulay for
23 ABS Valuation prepared a preliminary feasibility study
24 and a final special benefit. He is the appraiser
25 identified for the City for its Waterfront LID.

1 Objectors have presented expert testimony from
2 appraisers Anthony Gibbons, Peter Shorett, John
3 Gordon, and Brian O'Connor, and additional testimony
4 from others, including Randal Scott.

5 The motion moves to strike or exclude the
6 expert testimony and final special benefit study of
7 Mr. Macaulay as unreliable and not credible. It
8 states that Mr. Macaulay's final special benefit study
9 fails Frye, Rule 702, and Hearing Examiner 2.17
10 because it relies on fundamentally flawed methods to
11 conclude arbitrary and speculative special benefit
12 assessments that are neither actual, physical, or
13 measurable.

14 Under Frye expert testimony is only admissible
15 if it is based on generally accepted methods in a
16 relevant professional field and capable of producing
17 reliable results. Alternatively, under 702 an
18 expert's methods or data can be excluded if they are
19 considered unreliable or unhelpful to the trier of
20 fact. Hearing Examiner Rule 2.17 simply indicates
21 that there's an opportunity for exclusion of
22 unreliable expert evidence.

23 Hearing Examiner, having reviewed both the
24 written motions and heard oral argument from the
25 parties, views the motion mostly as a thinly veiled

1 attempt at summary judgment at midcourse, which just
2 the timing of the motion itself is -- strikes the
3 examiner as procedurally inappropriate.

4 Most of the argument in the motion is directed
5 at standards for review, not of admissibility of
6 evidence, but for review of special assessments and
7 the associated appraisal. These are objectors' final
8 arguments or general arguments. And even if this is
9 to be considered a motion for summary judgment, they
10 have not met that standard. Objectors have not met
11 that standard.

12 Mostly, objectors are arguing their case now,
13 and it's really -- it's a dispositive -- attempting to
14 be dispositive without any opportunity for
15 presentation of evidence by the City and/or from the
16 witness that's the subject of the motion.

17 Much of the motion specifically cites
18 standards that are relative specifically to the LID
19 challenge and really are an obvious attempt to have me
20 rule early. In addition, they've asked for as a
21 remedy for this a directed verdict, which is not even
22 possible in a recommendation hearing.

23 No authority is cited for applying Frye or the
24 Evidence Rule 702 in administrative hearing for
25 recommendation, and no final decision is pending. In

1 reviewing the case law, it shows that rejection of
2 expert testimony is an exception rather than the rule.

3 They've -- the objectors have cited to the
4 hearing examiner's role as a gatekeeper, but they're
5 associating this as similar to a trial judge. And,
6 again, I think that they're forgetting that this is a
7 recommendation hearing, not a final decision.

8 Even so, that gatekeeper role, in a
9 decision-making capacity, is not intended to serve as
10 a replacement for the adversarial system. As the
11 court in Daubert commenting on the Frye indicated
12 vigorous cross-examination, presentation of contrary
13 evidence, and careful instruction of the burden of
14 proof are the traditional and appropriate means for
15 attacking shaky but admissible evidence and proceeded
16 with 20 days' worth of testimony along those lines,
17 some of it well put. They've got some good experts
18 coming in. We'll speak to that in a minute.

19 Hearing Examiner will Rule 2.17 is a broad
20 door. It's certainly a familiar rule that I apply on
21 a regular basis. And the limiting aspect of it, as
22 far as unreliability, really needs to be applied only
23 in cases where it's obvious and easily established
24 that it's a matter of law, a clear matter of law or
25 commonly accepted fact, that it's -- the item is

1 unreliable, but not on a defined case like this, not
2 on a central document, not on the central issue and
3 witness for the entire case.

4 And, frankly, objectors have benefited
5 strongly from the examiner's practice under this rule
6 and others to allow full admittance of everything from
7 hearsay to whatever study you want and not just
8 objectors that are arguing today, but the 400 others
9 that will be affected by any decision that will come
10 out of this.

11 Hearing Examiner finds at this point that the
12 objectors' witnesses are not shown to represent
13 industry standards for special assessment appraisals.
14 Several of the appraisers identified have minimal
15 experience in an area like this. They can certainly
16 speak to these types of appraisals, and I've heard
17 those arguments. But the testimony has certainly not
18 risen to a level equivalent to peer review in a
19 litigious setting.

20 In some cases, objectors' witnesses didn't
21 even match the level that they are being attributed to
22 having claimed in this motion. For example, the --
23 there's a reference in the motion to exceeding a
24 5 percent rule -- it's 5 percent discretion. There's
25 a reference to -- sorry. Let me check my notes on

1 this and make sure I can articulate it clearly for
2 you.

3 There's a reference to a -- the benefit
4 falling below a margin of error of more than -- of
5 less than 5 percent. This margin of error of
6 5 percent is identified in the motion as -- discussed
7 as a set rule. However, none of the objectors'
8 witnesses have treated it as such. It's a rule of
9 thumb.

10 Mr. Gibbons, in his testimony on February 24,
11 identified six primary points, three of which he did
12 indicate that he believes the appraisal does not meet
13 industry standards. Three others he indicated were
14 judgment issues for an appraiser. A failure to
15 identify how this appraisal could fall within a margin
16 of error less than 5 percent was identified on that
17 date by Mr. Gibbons as a judgment call. It was not
18 identified as a failure to meet industry standards.

19 Similarly, Mr. Gordon has identified both --
20 both he and Mr. Gordon identified this margin of error
21 as something that's a rule of thumb, that there could
22 be evidence to show a smaller margin of error, but
23 that's the crux of the issue. That's the crux of the
24 argument that we have here that's presented by both
25 parties arguing over this. Is there evidence to show

1 a margin of error less than 5 percent? In some cases,
2 very small percentages.

3 None of them said that you couldn't go below
4 that number. They only said that you needed to have
5 the evidence. They argued that the evidence wasn't
6 there. They didn't see it. There needs to be a
7 chance for Mr. Macaulay to present that, and let's see
8 what he's got to say.

9 All of the appraisers presenting testimony so
10 far have had -- have made it clear that professional
11 judgment is a significant part of their trade. The
12 objectors' witness Mr. Gordon has cited at least a
13 couple times, I think, his indication, that if you get
14 six appraisers together, you get eight answers. And
15 so trying to find that four appraisers who come into
16 the room indicated they don't like what the City's
17 appraiser has done seems like that's par for the
18 course with that standard for their industry, not as a
19 set standard that the City appraiser should be simply
20 removed from the hearing and not have an opportunity
21 to present.

22 Similarly, objectors' experts often simply
23 didn't even know what information Mr. Macaulay used
24 informing his final benefit study, either because it
25 didn't come out during deposition or it's not there.

1 But saying you don't know what he did doesn't mean
2 that you know it was wrong. It simply means you don't
3 know.

4 And so, again, that points to the need for the
5 hearing examiner and the counsel to benefit from the
6 information that can be provided by Mr. Macaulay so it
7 can be evaluated in the context of the arguments
8 raised. At one point, even just two days ago,
9 Mr. Gordon specifically denied a question put to him
10 of methodology versus data. The question was about
11 was the method that Mr. Macaulay used wrong?

12 He said, While I don't think the method was
13 wrong. This is just as an aspect of the appraisal,
14 but I think the data was wrong.

15 And so, again, under Frye, you know, the use
16 of bad data, that's not enough to get him out as a
17 witness. The objectors have argued that his
18 methodology simply doesn't meet accepted methods. I
19 think, again, their own witnesses have not provided
20 evidence to support that, and that's what they're
21 relying on.

22 Lastly, striking the final benefit study would
23 remove the basis for the objectors' arguments in some
24 cases, in many cases. It would also deny the right of
25 cross-examination to many objectors, including those

1 presenting the motion who up to this date have
2 described cross and the right of deposition of
3 Mr. Macaulay as crucial to their cases. But now
4 they're suggesting, well, no, we can completely remove
5 him from the hearing and not be heard.

6 I hear and understand and respect the
7 arguments were made by objectors. They've had 20 days
8 to do that. I look forward to them concluding their
9 case today, and I look forward to hearing from
10 Mr. Macaulay and hearing the other side so we can go
11 through it. There's a lot of questions that have been
12 raised that the process is better served by the
13 opportunity to have him present, give evidence and
14 testimony, than simply excluding at this time.

15 On the above basis that I've described, the
16 motion is denied.

17 With that, we proceed with objectors' case.
18 Do we -- we had a potential witness that had been
19 scheduled originally for 10:00, but we had checked --
20 I asked to check to see if he could come on a bit
21 earlier. If that's not possible, we can adjourn until
22 10:00?

23 MR. LUTZ: Mr. Examiner, this is Jerry
24 Lutz. We will get in touch with Mr. Crompton --
25 Dr. Crompton. He thought he could potentially be

1 available as early as 9:30. His class went until
2 9:00, 11:00 Central time. But in order to do that, I
3 would suggest a short recess, and we could e-mail
4 Galen when we're ready to come back on, partly just to
5 make sure we've got the technology organized on our
6 end. He has an assistant who is managing the Zoom for
7 him because he's not as facile with the technology.

8 HEARING EXAMINER VANCIL: Okay.

9 MR. LUTZ: So starting at 10:00 might
10 be the most appropriate, or we could say 9:50.

11 HEARING EXAMINER VANCIL: Sure, gain a
12 few minutes. Do you have any other witnesses today
13 besides this one at 10:00, or are we concluding with
14 this witness?

15 MR. LUTZ: We are concluding with this
16 witness and a number of other declarations from other
17 witnesses.

18 HEARING EXAMINER VANCIL: Right.

19 MR. LUTZ: And then we were
20 anticipating a closing argument if there's time.

21 HEARING EXAMINER VANCIL: We can make
22 the time for that if that's how you want to do
23 closing. If you want to do oral closing today, is
24 that what you would like?

25 MR. LUTZ: We have -- we're filing a

1 closing brief, because that was our understanding of
2 your process. But to the extent that we have extra
3 time, I would propose a short closing.

4 HEARING EXAMINER VANCIL: Okay. Yeah,
5 the opportunity for written closing is just an
6 opportunity. It wasn't required. But if you're
7 taking advantage of it, that's fine. If you want to
8 add something orally because that's the objectors'
9 preferred opportunity to add that along, we can -- I
10 believe we'll have time to accommodate. But let's see
11 how the witness goes today. I don't want to curse us
12 by thinking it will go the speed that I think it will.

13 But let's -- let's -- let's just convene at
14 10:00. I think that will give everyone enough time to
15 breathe and get started at 10:00, and we'll start at
16 the top of the hour. So we'll take a short recess and
17 see you at 10:00.

18 MR. LUTZ: Megan said she couldn't
19 hear.

20 MS. LIN: Actually, I just have one
21 housekeeping question, and it might make sense since
22 we've got a moment right now?

23 HEARING EXAMINER VANCIL: Sure.

24 MS. LIN: So, actually, it's two
25 questions. We just filed the closing brief, and along

1 with that, we filed all of the rest of our supporting
2 declarations from the property owners. Is that
3 sufficient to make those property owner declarations
4 part of the record, or would you like us to also
5 submit them as hearing exhibits?

6 HEARING EXAMINER VANCIL: It's probably
7 best if we mark them by exhibit with exhibit numbers.
8 How many were submitted today?

9 MS. LIN: In terms of declaration,
10 there was eight, I believe.

11 HEARING EXAMINER VANCIL:
12 Mr. Edlund-Cho, remind me where we are in our
13 exhibit list. I think it was 93 or 94.

14 MR. EDLUND-CHO: Yes, I believe 94 has
15 been admitted, and according to the April 16 exhibit
16 list, we should end at 102, not including the
17 declarations that Ms. Lin had just sent about five
18 minutes ago.

19 HEARING EXAMINER VANCIL: So I'm sorry.
20 We have -- I heard another issue come up. We have
21 exhibits that have not yet been admitted up through
22 102?

23 MR. EDLUND-CHO: Yes. I believe those
24 are intended for the examination of Dr. Crompton
25 today.

1 HEARING EXAMINER VANCIL: I see. All
2 right. So if we want to stick with the ordering --
3 numbering identified by objectors, we would -- we
4 could label the declarations 103 through --

5 MR. EDLUND-CHO: 110 or 111, I believe.

6 HEARING EXAMINER VANCIL: Yeah,
7 whatever that is. Let's do that. Ms. Lin, if you
8 want to identify them by name, then I can just give
9 you a number, and we'll have them numbered on the
10 record and can hear if there's any objections. And we
11 can proceed that way.

12 MR. EDLUND-CHO: Yes. You know, I can
13 update the exhibits during our break. I think
14 20 minutes should be enough time.

15 HEARING EXAMINER VANCIL: That's fine.
16 Yeah, we're just going to start with new exhibit
17 numbers. So there's no need to renumber the ones that
18 they will use for the upcoming witness.

19 MS. LIN: And then the last
20 housekeeping, we recently received word from the City
21 yesterday that they are okay with us filing
22 Mr. Macaulay's underlying spreadsheets as part of our
23 case.

24 We would just -- we could probably rush to do
25 it today, but we kind of wanted to run it by our

1 clients, at least for some of the hotels. And so the
2 City has informed us that they don't oppose us holding
3 the record open just for the submission of the
4 spreadsheets, and if the hearing examiner is okay with
5 that, we would just request that the record be held
6 open just for that limited purpose.

7 HEARING EXAMINER VANCIL: I think that
8 would be useful, A, to have those introduced, and I'm
9 glad we're able to do that since they have been
10 referenced in testimony. It would be helpful to the
11 examiner if in that submission I not just get a stack
12 of documents. What I would ask for is -- so it's
13 the -- is it what has been relied on in testimony or
14 am I getting the whole data dump?

15 MS. LIN: You're going to get more than
16 what has been relied on in testimony. We've chosen a
17 few of the spreadsheets to discuss in the testimony
18 because it's difficult to walk through a spreadsheet
19 verbally. So you will be getting more than what we
20 have discussed orally.

21 HEARING EXAMINER VANCIL: What would be
22 more useful to me is -- proceeding along those lines,
23 let's get the data in, since it's more simple to keep
24 it all in a single document, but something -- since we
25 didn't -- rather than going back through and listening

1 to a bunch of videos to figure out where you were --
2 and I don't know if you identified during the
3 presentation with witnesses where in the -- that data
4 you were referencing.

5 It would be helpful if there was some type of
6 organizing note that came with it identifying which
7 sections have been relied on, when, and by which -- in
8 association with which witness, mostly Mr. Gordon, I
9 believe, but it's what case number was it brought up
10 under.

11 As I recall, mostly what I recall is what we
12 did recently, and that was where you were referring to
13 sheets based on a single case and property, and so
14 those that were raised in that manner in particular
15 would be helpful to flag in some manner in a note, and
16 I would ask that you develop the note to go with it.
17 This is not meant to be an opportunity for additional
18 argument or presentation of evidence but simply to
19 organize and reference back to what's already been
20 presented.

21 And so what I would ask is that if you draft
22 that, you present it to the City first so they can
23 take a look at it and say, yes, this is -- you know,
24 make sure there's no dispute over what's being
25 submitted. If you can't achieve that, you can all

1 come back to me and say here's our dispute with what's
2 being submitted or we need further guidance from the
3 examiner, and I'm happy to do that.

4 But seeing how counsel on both sides have been
5 able to work through various issues like this in the
6 past, I'd like to ask that you draft that note,
7 explanatory note of what's been used, move that by the
8 City, and if that can be mutually -- if they can
9 accept that that's going in with it, that would be
10 very helpful to me.

11 MS. LIN: Okay. That makes sense to
12 me. We've been getting the hearing transcripts for
13 these hearings about one to two weeks later, and so it
14 would be actually helpful to have those hearing
15 transcripts to identify the portions. So I would just
16 ask that the deadline for these be after release of
17 those hearing transcripts to give me probably
18 sufficient time to look through those and identify
19 those portions of the record.

20 HEARING EXAMINER VANCIL: And for the
21 Examiner, there's no urgency that it come in on any
22 particular timeline. So will you let me know -- can
23 you let me know now and we'll set the deadlines for
24 that? How much time do you need?

25 MS. LIN: Once I get the hearing

1 transcript, I -- so let's see. We're at the 5th --
2 the 14th was the last day that they were discussed.
3 So if we get the hearing transcript on the 28th, then
4 maybe a week for me to come up with something and then
5 to send to the City, so maybe May 5.

6 HEARING EXAMINER VANCIL: That's fine.
7 Yeah. So I'll look for them May 5. I'm not sending
8 any type of procedural order out requiring them to be
9 in by the 5th. If there's going to be an issue with
10 that from either party, simply you can alert the
11 Examiner, and we can reconvene if it's necessary to
12 address anything.

13 Mr. Filipini, any comment on what we've just
14 discussed and how that's -- what I've asked for? Is
15 there anything else that the City needs or comment on
16 what we just discussed? Or --

17 MR. FILIPINI: Sorry. I couldn't
18 unmute there. No. That all makes sense. Thank you.

19 HEARING EXAMINER VANCIL: Thank you.

20 MR. LUTZ: Mr. Examiner, now that we've
21 taken just a couple minutes towards 10:00, I was
22 hoping maybe we could have a couple more minutes to
23 get organized with Dr. Crompton. So maybe 10 after?

24 HEARING EXAMINER VANCIL: Yes. And I
25 apologize. Ms. Lin, you raised two issues. Did you

1 get them both addressed?

2 MS. LIN: Yes. We will be submitting
3 the declarations as exhibits to the hearing, and we
4 will be holding the record open for the limited
5 purpose of submitting Mr. Macaulay's spreadsheet with
6 an explanatory note by May 5.

7 MR. LUTZ: I'm sorry.

8 HEARING EXAMINER VANCIL: Sorry,
9 Mr. Lutz?

10 MR. LUTZ: And I just wanted to make
11 sure because we kind of let it drop in the middle
12 there, there is also going to be a trailing
13 declaration from Mr. Gordon submitted by midnight on
14 the 21st with respect to the March complete STAR
15 reports.

16 HEARING EXAMINER VANCIL: I think we
17 already have an order in the record on that schedule.

18 MR. LUTZ: Yes. Correct. Yes, there
19 is an order in the record.

20 HEARING EXAMINER VANCIL: All right.
21 Let's address getting the declarations numbered at the
22 end after we finish the next witness so we can stick
23 with the numbering and it makes sense. And that gives
24 you the remainder of this time to prepare with the
25 witness, and we're reconvening at, what, 10:10? Okay.

1 10:10, we reconvene. Thank you.

2 (A break was taken from 9:46 a.m. to
3 10:11 a.m.)

4 HEARING EXAMINER VANCIL: We return to
5 the record. Just a note for parties, when we take
6 breaks, we are not on the record. We're not
7 recording, but anyone can hear you who is part of this
8 meeting. So I may have my -- you can't hear me and
9 you can't see me, but anything you say near your
10 microphone, if you're not muted, is coming into my
11 living room. So just be aware of that.

12 We have -- Ms. Thompson, are you on for the
13 City?

14 MS. THOMPSON: Yes, I am.

15 HEARING EXAMINER VANCIL: Okay. So it
16 looks like we're ready to go then.

17 Mr. Thomas, please state your name and spell
18 it for the record.

19 DR. CROMPTON: My name is John L.
20 Crompton, J-O-H-N, L, C-R-O-M-P-T-O-N.

21 HEARING EXAMINER VANCIL: And do you
22 swear or affirm the testimony you provide in today's
23 hearing will be the truth?

24 THE WITNESS: Yes.

25 HEARING EXAMINER VANCIL: I'm sorry.

1 Your screen shows a different name of Darby Thomas but
2 now I understand.

3 DR. CROMPTON: Ms. Thomas is my
4 assistant, and she makes the technology work, sir.

5 HEARING EXAMINER VANCIL: Excellent.

6 Just a couple items on protocol, I assume,
7 Mr. Lutz, you are proceeding with question/answer?

8 MR. LUTZ: Correct.

9 HEARING EXAMINER VANCIL: And so,
10 Mr. Crompton, what you'll want to do is make sure that
11 your eyes remain on the video on the camera. If
12 anybody signals with a hand, it means they can't hear
13 you, and you should stop, either because your audio is
14 not coming through or we need to make sure that their
15 connectivity is established.

16 If an objection is raised by the City, and
17 that would be Ms. Thompson indicating objection,
18 raising a hand again, please stop your testimony.
19 You'll be indicated whether you can -- when or how or
20 if you can proceed with regard to that question.

21 DR. CROMPTON: Thank you.

22 HEARING EXAMINER VANCIL: Does any
23 party have any questions about how they're proceeding
24 or whether their technology is working or process as
25 we go into our witness?

1 MR. LUTZ: No.

2 MS. THOMPSON: No from the City.

3 HEARING EXAMINER VANCIL: Hearing none,
4 Mr. Lutz, your witness.

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

6 BY MR. LUTZ:

7 Q Dr. Crompton, could you describe your
8 educational background?

9 A Yes, sir. I did my undergraduate with
10 Loughborough College in England. I did a master's
11 degree at University of Illinois in 1967, '68, a
12 degree in business management, which is the British
13 equivalent in those days of an MBA before they came up
14 with MBAs, back in 1970 at Loughborough University.
15 And I have a Ph.D. from Texas A&M University in 1977.

16 Q And what's the focus of your Ph.D.?

17 A My Ph.D. is in recreation resources
18 development.

19 Q Are you -- could you describe your teaching?

20 A I teach in the fields of marketing and
21 finance, and then I apply those techniques to -- to
22 the field -- to recreation, parks, and tourism
23 sciences.

24 Q And your current employment?

25 A I'm employed by Texas A&M University and have

1 been on the faculty here since 1974.

2 Q Okay. And you mentioned it, but what are your
3 primary areas of research and teaching?

4 A My primary areas are in marketing and
5 financing in the context of recreation, parks, and
6 tourism.

7 Q And that's both for research and for teaching?

8 A Yes, sir, that's correct.

9 Q Okay. Now, you're a university-distinguished
10 professor. Can you tell us what that's about?

11 A I was appointed university-distinguished
12 professor in 2000. There are 4,000 faculty at Texas
13 A&M. When I was appointed in 2000, there were 37 of
14 us who had been awarded that rank. And I think we're
15 up to about 70 now. A&M has done some very good hires
16 and Nobel Prize people and so on in the last 20 years,
17 so the number has increased.

18 But it's an indication that one is leading
19 one's field in research. There are really two key
20 criteria. One is that you are in the top 2 percent in
21 your field of research in the world. The second, much
22 more important in criterium, is that you have changed
23 the narrative, the research narrative, in your field.
24 So your work is not just built on what somebody else
25 has done, but you have established a whole new

1 dimension in the research arena.

2 Q Okay. And do you have any other honors or
3 awards from the university?

4 A Well, if you're around a place long enough,
5 several kinds of good stuff happens. But I'm -- for
6 teaching I'm a presidential professor of teaching
7 excellence each year. The university recognizes two
8 faculty for their excellence in teaching with this
9 presidential title, and I was awarded that back in
10 about 2006, I think.

11 And then we are a land-grant school, as you
12 are aware. So we have responsibilities in teaching,
13 research, and service. We were very blessed at this
14 university to have George H. W. Bush to have his
15 library here. Bush was personally engaged a lot in
16 the university. In fact, he had an apartment here at
17 the university.

18 And in 2002 Mr. Bush presented me with his
19 annual award for contributions in public service. So
20 I think -- out of the 4,000 faculty at A&M, to the
21 best of my knowledge, I think I'm the only individual
22 who has received the university's top award in all
23 three areas.

24 Q The three areas being teaching, research, and
25 service?

1 A Yes, sir.

2 Q Now my screen just went blank, one second.

3 So please describe the focus of your research.

4 A Well, as a senior researcher, your mission
5 really is to identify research programs. In my career
6 I've had, depending how you count them, six research
7 programs. And what happens is you identify a problem
8 which you think is worth investing a significant
9 effort in. And, typically, you'd spend 15, 20 years
10 sort of doing projects that fit into that project and
11 into that program until you've got a way of where to
12 go and your solution.

13 So, currently, right now I have essentially
14 two major programs. One has to do with this business
15 about the impact of property values on recreation
16 parks, water amenities, and so on. And the second has
17 to do with the application of behavior economics
18 techniques to the field of public sector and pricing.

19 Q And so can you talk about your publications
20 related to tourism and recreation?

21 A My career is a little different from many
22 peoples in that I have worked in both areas. For
23 historical reasons, they have emerged differently in
24 academia. And so my degree was in recreation
25 resources development, but my thesis, my dissertation,

1 there was developing a model of how tourists make
2 decisions, for instance, the decision process. It was
3 a pioneering piece.

4 It was, I think it's fair to say, a foundation
5 piece for research and a tourism reason for the next
6 20 years. If you look at the research of those next
7 20 years from about the 1980 to about 2000, you find
8 that, invariably, I'm frequently cited. And so I've
9 had that tourism slant all of my professional life.

10 However, I've elected to go my teaching
11 efforts primarily in the field of recreational parks,
12 and if I have a reputation in North America and the
13 U.K., it would be in parks and recreation services.
14 If I have a reputation, particularly in Southeast
15 Asian or around Europe, it would be in the field of
16 tourism. But my teaching has been primarily in the
17 field of parks and recreation.

18 Q Do you have any upcoming or recently published
19 materials?

20 A That's an ongoing saga when you run a research
21 program. There are always five or six, you know,
22 articles in review somewhere or other in, you know,
23 whatever. And so, yeah, I mean, there's an ongoing
24 flow. Typically, I would do five to six, you know,
25 publications a year.

1 When I -- I looked it up before this. My
2 citations at this point are somewhere north of 41,000.
3 My work has been cited in something over 41,000 other
4 scientific publications in my career. I have
5 something called an H Index of 82. That means at
6 least 82 of my articles -- it means 82 of my articles
7 have been cited at least 82 times.

8 And then I have what's called an I-10 measure
9 in which says 220 of my articles have been cited at
10 least 10 times. So it's an ongoing process. So
11 there's always articles in the queue, yeah.

12 Q Okay. So what other roles do you have outside
13 of your teaching roles at A&M?

14 A Well, I have -- since I've been in this
15 community, I've always been engaged in civic life of
16 our city. And from my various pro bono sort of
17 contributions to the city over the 20-, 30-year
18 period, in 2004 the city named a park in my honor,
19 John Crompton Park, which is a delight. It's a
20 15-acre neighborhood park which I pass on my driving
21 to school every day which is very nice.

22 And then, serendipitously, without any really
23 intent on my part, I found myself elected to the city
24 council in 2007. I served on the council for four
25 years until 2011. It was a challenging time. During

1 that time I -- for various reasons, I competed and won
2 three elections in just that short period of time.

3 It was very confrontational. It was the order
4 of the tea party, and it got to be very nasty. This
5 national dichotomy we have now came all the way down
6 to the local level. When I finished my term, my wife
7 made it very clear I was done with politics. I would
8 not be doing that again.

9 However, time heals all things. People have
10 fresh eyes, and I have run for city council again.
11 And lo and behold, I competed last November against an
12 incumbent, and I prevailed. And so here I am back in
13 for another three years on city council. So our city
14 of College Station has 120,000 people. We have just
15 over 1,000 full-time employees, which is 373 million
16 this year. There are seven members on the city
17 council.

18 We all run citywide, and so my academic work
19 is many times filtered through a political spectrum.
20 And it's very nice to write white papers about what
21 should be as an academic, and there's a certain
22 reality which comes in on you when you serve a
23 political life as well, which tempers those perhaps
24 some more idealistic views.

25 Q And so as part of your -- do you have council

1 assignments that pertain to taxes or parks?

2 A Yeah. I mean, my -- on account of with just
3 seven of us, of course, you all have to take
4 responsibilities. My particular responsibilities, I'm
5 sort of the council's lead person on our conventions
6 and visitors bureau. We have a bed tax which
7 (inaudible) of about 6 million a year which we
8 allocate through CBP. And then I'm also -- heads up
9 on the county's economic development committee.

10 Q Thank you. Do you have any other relevant
11 employment prior to your A&M assignment that is worth
12 talking about?

13 A Well, as I said, I did a degree at the
14 University of Illinois in 1967/'68. I did it in
15 something called recreational park administration,
16 which universities in that era did not do practical
17 topics. If you wanted to do a degree in, for example,
18 your own field of law or accounting or any of these
19 practical professional challenges, you did it through
20 apprenticeship, and you said articles of
21 appropriation, you worked with a firm, you passed the
22 exams at night school and so on. Universities did
23 traditional (inaudible) things.

24 I had done a senior thesis for college on
25 post -- post-university recreational activity. When I

1 saw this program at the University of Illinois, which
2 was recognized as being the best in the United States
3 at this time, I decided that's what I wanted to do.
4 So I went to University of Illinois for a 16-month
5 period and got that degree.

6 I went back to England, and, of course, so the
7 English hears a degree in parks and recreation from
8 America has all kinds of trivial connotations. And so
9 I did a -- I did an MBA -- equivalent MBA degree in
10 the States. And when I had done that or when I was
11 doing that. I stopped and thought, you know,
12 Crompton, you're the only person in the U.K. with a
13 degree in parks and recreation out of 60 million
14 people.

15 And so serendipity happened again, and I
16 partnered with -- the gentleman was a senior professor
17 at the business school of A&M -- I'm sorry. At
18 Loughborough University, and he brought in a gentleman
19 who the previous year had retired as the president of
20 university. And so the three of us established a
21 company called Loughborough Recreation Planning
22 Consultants, and Doug Haselgrave and Jeffrey were, of
23 course, the rainmakers who generated business. I'm
24 just a kid straight out of school here almost, but I
25 was the person who did the business in the company.

1 It was one of these times of being in the
2 right place at the right time. And when I sold my
3 share of the company when I was headhunted by A&M to
4 come out here in 1974, we had 25 full-time people,
5 10 part-time people. We were the largest consulting
6 business in the parks, recreation, and tourism field
7 in northern Europe at that time.

8 Q Thank you. Now let's move on to your work in
9 this case. Have you reviewed Mr. Macaulay's final
10 special benefit study?

11 A Yes, sir.

12 Q The entirety of it?

13 A Yes, sir. I read the whole document.

14 Q What about the addenda?

15 A Yes. That whole thing about 6,000 values, I
16 skipped that. But there were some parts there -- I
17 don't know if they were identified in his report or I
18 picked them up subsequently, but there were
19 representations of what the LID would look like or
20 what the recreational components would look like. And
21 there were photographs and so on, so I did review
22 those as well.

23 Q All right. Thank you.

24 So can you talk generally about the focus of
25 your review of the final study as it pertained to your

1 work?

2 A Let me back up, sir. You approached me and
3 brought this to my attention and asked if I would be
4 interested in participating, and because of my
5 visibility, longevity, or whatever, you know, over the
6 years I've been approached many, many times by groups
7 who are engaged in legal activities through -- to
8 engage on their behalf or whatever.

9 I'm very suspicious of those, because, for the
10 most part, they want me to be an advocate. And once
11 you become an advocate, it means you cherry pick for
12 the bits and pieces that suits inflation. I have high
13 visibility and a reputation I value as a social
14 scientist. And so generally my response to those
15 requests has been I'm not going to do that.

16 Now, this was different because here my
17 credibility as a social scientist was really being
18 challenged, because in my view, my work was being used
19 in what I thought was an inappropriate way. And so I
20 took upon -- I agreed to participate in that because I
21 thought my work was being misapplied.

22 Q Okay. Thank you.

23 And so the focus of your review was -- was on
24 Mr. Macaulay's references and interpolation of your
25 research?

1 A Yes. And that's a fairly narrow brief. My
2 concern was how is my work being used by Mr. Macaulay,
3 and is it being used appropriately? That was why I
4 agreed to participate in this.

5 Q Okay. Thank you.

6 So you mentioned you reviewed the final
7 benefits study. Can you talk about what else you
8 reviewed in the course of developing your opinions?

9 A Well, I have the Macaulay study. I think I
10 had Mr. Macaulay's deposition that he made at some
11 point or other which was sent to me. I requested a
12 GIS map of the site done in a particular way that I
13 specified. And I have the representations of the --
14 of the LID, the current situation before the LID and
15 the LID photographs. So I think those were basic
16 documents that I was given through you.

17 Q Okay. And you did prepare a report with your
18 findings. Did you work on it yourself or were others
19 involved in preparing the report?

20 A No others were involved.

21 MR. LUTZ: So, Mr. Examiner, I'm not
22 exactly sure of the protocol. This -- Dr. Crompton's
23 report has been marked as Exhibit 94 to my
24 understanding. And we'd like to be able to ask
25 Dr. Crompton to authenticate it and then admit it for

1 the record.

2 A Am I -- yeah. That's my report.

3 HEARING EXAMINER VANCIL: All right.

4 Let me make sure I've got a copy of it.

5 Okay. I have a copy and it's opening now.

6 It's been marked as Exhibit 94. Are you seeking to
7 have it admitted now or just you want it marked?

8 MR. LUTZ: Well, if we can admit it,
9 that's great. If you want to wait to hear the
10 testimony and then admit it, we can do it later.

11 HEARING EXAMINER VANCIL: Typically,
12 admission can face an objection, and you may want to,
13 you know, establish foundation and that type of thing.
14 So when you seek admissibility is up to you. Are you
15 moving for that now, or are you waiting?

16 MR. LUTZ: Yes, unless Ms. Thompson has
17 any objection.

18 HEARING EXAMINER VANCIL: Is there an
19 objection to Exhibit 94?

20 MS. THOMPSON: Apologies. My internet
21 service just cut out a little bit. So I missed the
22 last, like, minute or two of the discussion.

23 HEARING EXAMINER VANCIL: Not much.
24 There's been a discussion -- I'm not sure of when you
25 cut out, but, essentially, the discussion was about

1 whether there was a 94 that had been submitted and the
2 item -- and whether the item was Mr. Crompton's
3 report. He testified that it was his report, what's
4 been marked as 94. And Mr. Lutz has asked to move at
5 this time for admissibility, and I'm asking if there's
6 an objection to 94.

7 MS. THOMPSON: Sorry. I'm just
8 reviewing a copy of the exhibit.

9 Okay. No objection.

10 HEARING EXAMINER VANCIL: Ninety-four
11 is admitted.

12 MR. LUTZ: Thank you.

13 (Exhibit 94 was admitted.)

14 BY MR. LUTZ:

15 Q So, Dr. Crompton, before we get into the
16 details, your report identifies a number of ways that
17 you disagree with Mr. Macaulay's use of your research.

18 MS. THOMPSON: Objection, leading.

19 MR. LUTZ: And I'm just going to
20 highlight the topics so that we can go through them
21 one by one, but I thought I would summarize them
22 before we start the exam. The --

23 HEARING EXAMINER VANCIL: Objection --

24 MR. LUTZ: Go ahead.

25 HEARING EXAMINER VANCIL: There was an

1 objection?

2 MR. LUTZ: At this point, Mr. Examiner,
3 I'm just trying to set an outline of what's to come
4 based on what's in the report that's been admitted,
5 the different -- the eight different major topics that
6 are coming. So I was just going to summarize them
7 before we delved into them.

8 HEARING EXAMINER VANCIL: I'm going to
9 mute you for a second so I can talk.

10 The question was -- the objection was to you
11 raising a question to Mr. Crompton. If you're just
12 doing an outline to me, that's fine. But if you
13 present it in the form of a question to Mr. Crompton,
14 then maybe we've got an issue.

15 So please clarify. Are you just giving some
16 indication to the examiner how you're proceeding? Do
17 you have a question? What are you doing?

18 MR. LUTZ: This is a summary for the
19 examiner before we start Dr. Crompton's
20 question-answer testimony about the eight different
21 major topic areas that are going to be covered.

22 HEARING EXAMINER VANCIL: That's fine.

23 BY MR. LUTZ:

24 Q The first area is Mr. Macaulay's use of
25 research that is now -- that has been updated.

1 The second is the application of
2 Dr. Crompton's work to different property types that
3 were not studied.

4 The third is the characterization of the LID
5 improvements by Mr. Macaulay as they would be
6 addressed in the types of research that Dr. Crompton
7 is involved in.

8 The fourth is the calculation of distances to
9 which benefits might be expected. There's a subset of
10 that that is a feet versus blocks concept. The park
11 quality scale in Mr. Macaulay's final benefit study,
12 his analysis of the effects of disamenities, and,
13 finally, an economic -- behavioral economics principle
14 called proximate principle and confounding effects of
15 water views and other potential value enhancers on the
16 analysis of potential park benefits.

17 And so with no further adieu --

18 A Mr. Lutz, may I just interject?

19 Q Yes, certainly. Go ahead.

20 A (Inaudible) is with the report was about
21 prospect theory, not proximate.

22 Q Oh, I'm sorry. Right. Prospect theory, not
23 proximate. It shows I shouldn't have done that. At
24 any rate, it's the behavioral economics theory of
25 prospect theory.

1 So with that introduction, Dr. Crompton, let's
2 move on to each of those topics. Can you describe
3 your understanding of Mr. Macaulay's references to
4 your research in his final benefit study? Let's start
5 with your 2001 article published in the Journal of
6 Leisure Research. Please describe that article.

7 A It was what I term a benchmark article. As I
8 indicated earlier, my career has been about
9 investigating research programs, developing research
10 programs. Historically, the parks -- the rationale
11 for other parks, if you go way back to the history in
12 the 1900s, the rationale was that the impact of parks
13 on property values generated sufficient additional
14 revenue from to the tax base, but the revenue, in
15 fact, paid for the cost of the park.

16 And there's a long history of that
17 conventional wisdom right from Olmsted on Central Park
18 and the British parks of the 1800s and so on. And
19 that had been conventional wisdom for a while. It
20 occurred to me when I was sort of investigating this
21 and I found out that there had been very little
22 empirical research in this area. It was conventional
23 wisdom, but nobody had done a research program in this
24 area.

25 It was fundamental to the rationale for the

1 parks, and so I decided that would be a research
2 program I would undertake. The starting point in
3 these research programs always is I start with a
4 benchmark study. I want to know what is the state of
5 the art at this point in time of our empirical
6 knowledge about this phenomenon.

7 And so that was the first -- that was the
8 purpose of this benchmark study. It was we looked at
9 30 pieces of empirical evidence. I use empirical
10 really in quotes. Much of it was, yeah, empirical,
11 but really anecdotal. Much of it was naive.
12 Nevertheless, it was the state of the art at that
13 point in time that was the basis from which we build
14 our research program.

15 Q I'm sorry. I muted myself because we had a
16 fire truck going by, and all the dogs in the
17 neighborhood were barking.

18 So the intent of the report was to try and do
19 a modern investigation of the potential value of
20 parks?

21 A It wasn't an investigation on my behalf. It
22 was a benchmark study of the state of the art of the
23 literature at that time.

24 Q Can you describe any qualifications that you
25 want people to understand with respect to the 2001

1 benchmarking study?

2 A As I said in the abstract of that article,
3 it's a point of departure. You know, we generated
4 some averages, if you like, as points of departure.
5 Now, the problem with this kind of work is it is
6 always context specific. Every context is different.

7 And so -- but when you're researching what's
8 an impact on public parks (inaudible). You've done
9 this work, Crompton. How does it apply in my
10 community? Well, here's some average uses of point of
11 departure, but always you qualify it and say, yeah,
12 the average is, but your situation is probably
13 different. This is a point of departure, and that's
14 the qualification that I put in.

15 Q Okay. So what did your benchmarking show
16 about potential value impacts?

17 A So if I quote from the abstract summary, it
18 says: As a point of departure, the study's results
19 gives a positive impact of 20 percent on property
20 values abutting or affronting a passive park area is a
21 reasonable starting point. If it is a heavily used
22 park catering to large numbers of active recreation
23 users, then the proximate value increment may be
24 minimal on abutting properties when they reach
25 10 percent in properties two or three blocks away.

1 In other words, if you're located next to a
2 property that has ball fields and lights and traffic
3 and congestion and litter and lots of people and so
4 on, it probably depreciates your property. Once
5 you're a couple of blocks up and you don't have that
6 adjacent noise and disamenity, then perhaps you get
7 some gains from it. That's what this finding is
8 saying.

9 Q So let's move from the 2001 study to
10 Mr. Macaulay's references attributed to you to a 2014
11 study. Can you discuss that reference and your
12 understanding?

13 A Well, there was no 2014 study. I think on
14 Mr. Macaulay's part, that was probably just a
15 typographical error. There was a report I did in
16 2004. And it was not an update of the 2000 data --
17 2001 scientific report.

18 The National Recreation and Park Association
19 is the national professional organization for this
20 group and for this field, and they have about 40,000
21 members. They approached me, and they said this is
22 fundamental for parks. We've had it for 150 years,
23 and you've written about scientific stuff. We need to
24 communicate with our people in the field what your
25 findings are.

1 And so I really repackaged the scientific
2 publication for a professional audience. Take out all
3 the methods. Take out all the jargon, you know, and
4 use it in layman's kinds of terms. Now, in fairness,
5 it wasn't (inaudible) parks section of that book, and
6 that book is something called The Proximate Principle
7 here. The parks section of that book uses exactly the
8 same data I put in the scientific publication. There
9 is no difference. It's the same scientific stuff;
10 however, it also extends beyond the parks.

11 Because at the same time that I was doing work
12 in parks, we were benchmarking trails and water
13 amenities and golf courses and so on. So the book
14 also included chapters and sections on what the
15 science benchmark studies in those areas had found and
16 put them in layman's terms. So it was a comprehensive
17 package.

18 Q Okay. And your report on that talks about a
19 plug-and-chug. Can you tell us what that's about?

20 A Well, people call and they want to know how
21 does this apply to my area. And as I said earlier,
22 it's context specific stuff, but there's an amends to
23 say how do I fit in my area. So we produced a
24 template, and on the fringe of this thing, we called
25 it a -- what is it here? What's the terminology I

1 used? Estimating the magnitude of proximate premium
2 in a local community, and it was simply a template.

3 And it was an intent, but people could plug
4 numbers in from their own community, or plug generic
5 average numbers we found in the science and apply it
6 to their own community and come up with some sort of
7 rough approach.

8 And so let me just read to you my -- from this
9 document that I was supposed to use. I said:

10 Undertaking hedonic studies, which is what we do
11 scientifically, and calculating the impact of parks on
12 home values and property taxes and property tax base
13 requires considerable skill and computer mapping and
14 uses of physical techniques, and it's time consuming.

15 It's likely to be impractical for most park
16 agencies to replicate the study of distinction.

17 Nevertheless, many agencies seek a method of applying
18 a valuation of parks that they can adapt for use in
19 their own communities.

20 The approach is offered here for doing this,
21 but it is emphasized that this approach can only offer
22 a rather crude best guess. Empirical findings from
23 the study reviewed in this monograph provide a basis
24 for developing a relatively simple plug-and-chug
25 formulary approach that can be used by an estimate of

1 the proximate principle in your community.

2 So, essentially, I'm saying it's a best guess.
3 You know, if you've got to use some numbers, these are
4 the best ones we've got at this point in time.

5 Q Okay. Thank you. Now, if it's a best guess,
6 how -- how do you react to Mr. Macaulay's use of that
7 information or apparent use of that information in the
8 final benefits study?

9 A Well, you know, some of the -- some of the
10 averages that I used were derived from a very
11 different situation from Seattle. When I went back
12 and looked at the -- at the distance of which
13 proximate parks have on proximate property -- impacts
14 they had on proximate property, typically, it was all
15 within the first 500 feet.

16 Most of the urban settings in which these
17 things were done were, in fact, done in fairly tight
18 condo blocks. And so when you talk about 500 feet,
19 it's a very abstract concept in the sense that it's
20 difficult for laymen to get across. If I ask my wife
21 how far 500 feet is, I mean, I don't know what answer
22 I would get, but you can't just pick and say it's
23 that.

24 So I accepted to reify it for my professional
25 audience, and so I said, well, it's kind of like three

1 blocks. And I think -- well, what Mr. Macaulay did is
2 he applied the three-block measure instead of applying
3 the 500-foot measure, which given that Seattle blocks
4 are longer, then you got very different results. And
5 I would --

6 MR. LUTZ: Okay. We'll get back to the
7 block -- feet versus block issue again a little bit
8 later. Let's move on to what's been marked as
9 Exhibit 95. And, again, Mr. Examiner and
10 Ms. Thompson, if there's no objection to it, we would
11 like to have Dr. Crompton identify it and then admit
12 it before the testimony. We can do it following up if
13 we need to for some reason.

14 DR. CROMPTON: Yes, sir. That is my
15 study. It's a more recent publication of what we have
16 established through our research program.

17 HEARING EXAMINER VANCIL: Any objection
18 to the admittance of 95?

19 MS. THOMPSON: Give me one moment to
20 take a look at it.

21 No objection.

22 HEARING EXAMINER VANCIL: Ninety-five
23 is admitted.

24 (Exhibit 95 was admitted.)

25 HEARING EXAMINER VANCIL: And while I'm

1 at the mic for a moment, I'll just note for the
2 parties, please remember, as I mentioned earlier in
3 the hearing, that if I'm not looking directly at the
4 screen, it's not because I'm not listening or intend
5 it as any disrespect. I have a second screen off to
6 my left, and that's where I see my -- that's where I
7 get my exhibits and notes and everything like that.
8 So I am listening and I'm with you.

9 Please proceed, Mr. Lutz.

10 MR. LUTZ: And before I do, I'm doing
11 the same thing, so I'm intending no disrespect by
12 looking to the side either. Thank you.

13 BY MR. LUTZ:

14 Q Dr. Crompton, you've identified your 2019
15 article. Can you please describe this article and its
16 relationship to your 2001 research.

17 A This is really a summation of what we have
18 accomplished over the last 16 or 17 years since we
19 started this research program. It's a summation not
20 only of what my team has done but what other teams
21 have done as well in this area.

22 The science has evolved considerably in the
23 last two decades because the tools available to us are
24 much more sophisticated than anything people have sort
25 of prior to roughly the millennium kind of framework.

1 GIS became much more sophisticated, and, of course, we
2 use GIS.

3 The Multi Listing Services of the Realtor
4 companies were electronic, and so we could use much
5 larger samples instead of having to do them by hand.
6 The statistical techniques were much more
7 sophisticated. The computer capacity is greater so we
8 could incorporate many more variables. By using
9 electronic data stuff, we were able to use sales
10 values whereas in previous studies, we had used
11 assessed values. And many times there are
12 discrepancies between the two.

13 So the bottom line on that, Mr. Lutz, is there
14 are more recent -- more recent summary review of where
15 the field is now provides us with much more accurate
16 data than we had the first time around because we've
17 got much better science now than we had then.

18 Q And did you -- did that research include
19 updating your plug-and-chug recommendations?

20 A Yes. I'm doing it in a follow-up book of the
21 2004 book I'm doing which I proofed the galleys six or
22 eight months ago, and publishers assured me it would
23 be out in January or February. And this is March and
24 it's not yet, but it should be here at any moment in
25 time. And so, yes, in the front of the -- the

1 appendix in that book I did update my plug-and-chug
2 approach.

3 Q And we will have that exhibit shortly.

4 Can you talk about the methodology for your
5 2019 report?

6 A It was similar to the first one. It was sort
7 of a benchmark study after where we are now, and,
8 again, we're a long way from where we were. There are
9 still some things that need doing before that research
10 program is complete, and we identified what those were
11 and studied. They're rather technical things, but
12 they need to be resolved over the next four or five
13 years. So it was really a state of the art of where
14 the field is at this point in time.

15 Q Were those studies all uniform or did they
16 take different approaches or how --

17 A Well, they are uniform in the sense where all
18 of them use economic analysis. This is a technique
19 which was pioneered in the '70s was difficult to
20 implement effectively until the last couple of decades
21 because we didn't have the tools.

22 But now all the teams working in this area use
23 it on economic analysis. It's a technique whereby you
24 parcel out the values of property of all the variables
25 and impact of value of a piece of property, and

1 there's a way that you do that through this technique.

2 Q Okay. And were they -- were the -- what was
3 the geographic scope of the studies that you were
4 using for your benchmark?

5 A They were all American. They're across the
6 United States, and the criteria is they have to be
7 published in scientific literature. And so, you know,
8 they're all over the place. Many of these studies,
9 let me say, the majority of these studies were not
10 focused on parks. The majority of these studies were
11 done by people in agriculture economics, land
12 economics, economics, and they were generic in the
13 sense that they incorporated a whole array of
14 (inaudible).

15 If I just give a quick summary of this thing,
16 you know, you put in -- you put in the structural
17 attributes of a property, you pick those out from the
18 Multiple Listing Services, the number of bedrooms,
19 bathrooms, square footage, characteristics of the
20 house, that's one of the onerous. You put in the
21 neighborhood attributes, the quality of the
22 neighborhood, structures, whether ownership, their
23 rental, (inaudible) composition. That goes in the
24 model.

25 You put in the community attributes. That is

1 school taxes, tax districts, school districts, its
2 caliber and so on. You put in the locational
3 attributes, proximity and accessibilities of various
4 amenities or disamenities, like waste sites, power
5 lines, churches, highways, shopping centers and so on.
6 Environmental attributes, the view from the property,
7 noise levels, all of this stuff you can put in a model
8 now.

9 And so people who are into real estate values
10 want to know what is the relative impact of all of
11 these variables on creating value in a piece of
12 property. What is it that causes one house that's
13 identical to another house in a different area to have
14 very different values? That's what this book is
15 about.

16 So parks is one component of that most of the
17 time. What we did here was to take the parks
18 component and focus on it because that was our
19 interest. It was in the parks field that we
20 specialize.

21 Q Okay. And so with -- can you talk about how
22 heterogeneity complicates that analysis when you're
23 focusing on that particular element like parks?

24 A Yeah. When you take averages kind of these
25 things -- and in any given context, they can mislead

1 rather than inform. As I said before, context are
2 very different. And your study will vary according to
3 that context. So to take an average number and plug
4 it in, it's a best guess. It's really loose. You
5 know, but at least you got something to hang your hat
6 on.

7 Q Okay. And what types of properties were you
8 focusing on?

9 A Well, your constraint in that -- you're
10 constrained by what the Multi Listing Services have
11 available. And so what they report is, for the most
12 part, single family, and to a lesser extent,
13 condominium and apartments, multifamily complexes.
14 And so it was residential properties. That's what our
15 work -- and everybody else who works in this field,
16 they deal with residential properties because there's
17 always other data that are available.

18 Q And so there -- well, let's skip this for a
19 second.

20 So were there studies that you looked at in
21 the course of that 2019 article that dealt with
22 greenways and parkways as opposed to parks?

23 A Those are not in that article. We have a
24 series of other articles that do that, but in that
25 1919, no. We did publish another article in 2019

1 which dealt with greenways just as we did back in
2 2000, 2001, somewhere in there, we published a
3 baseline article on greenways.

4 Q Okay. We'll get to that.

5 So what did you find about property values
6 being influenced by proximity to parks?

7 A Well, we found that our other estimates were
8 too generous. They were too optimistic. And so when
9 we looked at the 33 studies, we categorized them into
10 three groups. We said, okay, which of these studies
11 show a less than 5 percent premium? How many of them
12 show less than 5 percent premium? How many show a
13 sort of 5 to 9, 10 percent premium? How many show
14 over 10 percent premium?

15 We found that amongst these 30-odd studies
16 about an equal number fall into each gap. Those
17 premiums are much lower than we are finding
18 originally, and there are some technical reasons for
19 that. But that led us to conclude, if I read the
20 review article here, that sort of results suggested a
21 premium of 8 to 10 percent on properties adjacent to a
22 passive park is a reasonable part of the (inaudible),
23 which is lower than suggested by previous guidelines.

24 Q And, again, the previous guideline was
25 20 percent?

1 A Yeah, was my 2001 benchmark.

2 Q Right. Okay. So now please discuss the
3 relevance of omitted variable bias to your 2019
4 update.

5 A As I said earlier, the sophistication of the
6 methodology or the tools available to us has increased
7 considerably, and I can best illustrate that by
8 anecdotally rather than statistically. But if you go
9 to -- if you analyze a piece of property and you say
10 there are five variables and impacts and you put five
11 variables into a model, then let's say they all impact
12 similarly than 20 percent, each of those variables has
13 a 20 percent impact.

14 Now, if you put 5 variables or 20 variables in
15 the model, then instead of having a 20 percent impact
16 from 5, you have a 5 percent impact from 20. Just the
17 fact that you've omitted a number of variables that
18 actually affect the phenomenon has resulted in some of
19 that value that should have been attributed elsewhere
20 being attributed to your variable.

21 And so what's happened is in the early studies
22 there were very few variables involved because we
23 didn't have the capacity, either the GIS or the
24 statistical or (inaudible) didn't have the tools to do
25 it. (Inaudible) these tools we could now put in much

1 more manageable variables, and, therefore, the
2 variance -- values attributable to each of these
3 variables was more accurately parceled out. So much
4 of the change was attributable, not to any change in
5 property values, but attributable to more
6 sophisticated tools.

7 Q And so how does your 2009 update -- how is
8 your 2009 update relevant to your assessment of
9 Mr. Macaulay's reliance on your 2001 research in his
10 final study?

11 A Mr. Macaulay didn't have access to that study.
12 It was not published until -- the published version
13 actually came out about two months ago in JLR.
14 However, it was published earlier online. It was
15 published in August, I think, 2019 online, but
16 Mr. Macaulay was relying on the old data which he had,
17 and those data have been updated substantially since
18 then.

19 Q Okay. And did you get any calls from
20 Mr. Macaulay or his team to inquire about your
21 research on this topic?

22 A No, sir. As I said, I was unaware of this
23 until you approached me or one of your colleagues
24 proposed me and referred me to it.

25 MR. LUTZ: So you mentioned before the

1 upcoming book. I'd like to get Exhibit 96,
2 Mr. Examiner, and, again, if there's no objection, I'd
3 like to admit it now after Dr. Crompton has identified
4 what it is. And if there is, we can proceed with some
5 more foundation first.

6 DR. CROMPTON: It's an update of my
7 plug-and-chug that I put in the original 2004 book.

8 HEARING EXAMINER VANCIL: Any objection
9 to Exhibit 96?

10 MS. THOMPSON: I would just ask that
11 objectors lay some foundation for this document.
12 It's -- it appears to be an appendix to a larger
13 document which we haven't received testimony about.

14 MR. LUTZ: That's fine.

15 BY MR. LUTZ:

16 Q Dr. Crompton, can you describe what Appendix 3
17 is and what it is a part of?

18 A Well, I have draft -- the galleys draft here
19 of the thing here is it's a book called the Impact on
20 Property Values of Parks, Trails, Golf Courses, and
21 Water Amenities. And if you really want chapter and
22 verse, you have the privilege of plying through 510
23 pages of it. This is an appendix which gives the
24 professional an opportunity to plug-and-chug in the
25 field of parks. That's what it is.

1 Q Okay. And has it been published yet?

2 A Well, as I said earlier, no, but if you go on
3 the website, it says coming shortly. I'm waiting.

4 Q Did it go through peer review and whatever
5 other publication diligence is -- precedes it?

6 A I'm sorry, sir?

7 Q Has it been through the diligence that
8 precedes publication?

9 A Oh, yeah. I've done -- they go through it
10 with a copy editor. We have two or three iterations
11 on copy editing. What I've got here is the final
12 galleys before they send it to the printers. It's
13 gone to the printers, and I guess the (inaudible) is
14 holding it up at this point.

15 MR. LUTZ: Okay. I move admission of
16 Exhibit 96.

17 HEARING EXAMINER VANCIL: Any objection
18 to Exhibit 96 being admitted?

19 MS. THOMPSON: No objection.

20 HEARING EXAMINER VANCIL: Ninety-six is
21 admitted.

22 (Exhibit 96 was admitted.)

23 BY MR. LUTZ:

24 Q Okay. So you mentioned, Dr. Crompton, a
25 little bit about what Appendix 3 is. Can you describe

1 in particular the purpose of Appendix 3?

2 A Well, it's the same as it was in the original
3 document, and the same -- I use actually the same
4 language I did in the original document saying, you
5 know, this is -- an approach is offered here. It's
6 emphasized this template can only offer a rather crude
7 best guess, and it gives some ways they can plug and
8 chug and make that best guess.

9 Q So plug-and-chug and best guess are still in
10 Appendix 3?

11 A Yes. It's a little more sophisticated than my
12 first effort, because a number of professionals have
13 used it. And they've given me feedback over the years
14 as to what works well and what doesn't and so on.
15 And, actually, in the appendix, I do include some of
16 their examples where they've used it. It's,
17 essentially, the same premise, but it's updated.

18 Q And so, again, can you describe the -- your
19 ultimate plug-and-chug recommendations in Appendix 3
20 as compared to the --

21 A What this --

22 Q -- plug-and-chug recommendations in the 2004
23 book.

24 A Yeah. It says you grade each park in your
25 system on a five-point scale, and I provide a park

1 quality scale for doing that and lay out what each of
2 those five scales are. And, you know, you assume --
3 you recommend these things are done on a bell curve.
4 And so my scale has unusual excellence, above average,
5 average, below average, and dispirited/blighted.

6 And so, you know, if the bell curve, your
7 average, obviously, is in the middle of the bell.
8 Above average would be one standard deviation out, and
9 unusual excellence would be a couple standard
10 deviations out in technical terms.

11 And so then, you know, I go on and say: Based
12 on the results reported in the monograph, the book,
13 whatever, the suggested premiums applied to all single
14 family home properties within a 500-foot proximate
15 area for each of the three categories shown in the
16 exhibit are unusual excellence, a premium of
17 10 percent; above average, 5 percent; average,
18 3 percent.

19 So I'm taking my bell curve and saying if
20 you're a couple of standard deviations out, then
21 10 percent, you're unusual excellence; above average,
22 5 percent; average, 3 percent. Let me emphasize these
23 are best guesstimates on my part. You know, we can
24 debate them. They're best guesstimates on the
25 evidence I've got.

1 Q And how would you build on that plug-and-chug
2 model to -- as a recommended process for estimating
3 property value impacts with planned parks?

4 A Well, I'm not sure I can build upon it as
5 such. I mean, it lays out what it is, and it gives
6 you as a city some feel for how much -- when you apply
7 these premiums to your properties how much of your tax
8 base may be attributable to the parks.

9 Q And then how would you refine -- how would
10 that estimate be refined? Is there any process at the
11 outset to do that, or do you just have to wait for
12 more data to come in when the park is completed?

13 A Yeah. I mean, that's the best we've got
14 unless you're going to do an actual model in your
15 parks system. That takes a lot of skill and talent
16 and it's expensive. We've got some parameters here.
17 We know most of the variances accommodated within
18 500 feet and we know that. And so I'm recommending
19 you just use the 500 feet in here as your parameters
20 for these things.

21 Q So as part of the update, what are your
22 current conclusions about going out to 2,000 feet or
23 1,200 feet?

24 A In the science document of 2019, we talk about
25 going out to 2,000 feet. That is for community parks,

1 and so we're talking about typically large parks. So
2 if you go into Seattle's master plan someplace -- I
3 think I quoted it somewhere in my report. I need to
4 find that. I can try and dig up that. One second.
5 Hang on a second here.

6 So Seattle's master plan defines a community
7 park. Community parks -- and let me quote. Community
8 parks satisfy the recreational needs of multiple
9 neighborhoods. They generally accommodate group
10 activities and recreational facilities not available
11 at neighborhood parks. They may have athletic fields,
12 large open spaces, paths, benches, natural areas, and
13 restrooms. Community parks are accessible by arterial
14 or elective streets and usually use off street
15 parking.

16 That's the City of Seattle's definition. It's
17 fairly generally accepted. So when we're talking
18 about that 1,200 feet, that 2,000-foot barrier, we're
19 saying that, yes, because these community parks have
20 this array of amenities, pools and athletic fields and
21 whatever else out there, people may well feel that if
22 they live within 2,000 feet then there's some value to
23 their property. Probably fairly small, but it's
24 there. And so that was the intent of sticking it out
25 there, and it was based upon the science that we had

1 got from the reports that we had done.

2 Q Okay. Thank you.

3 HEARING EXAMINER VANCIL: Mr. Lutz, one
4 moment, please.

5 Mr. Crompton, you just cited a City definition
6 of park. And can you provide the citation for that,
7 or is that in one of the documents that's been
8 introduced as an exhibit?

9 DR. CROMPTON: I'm on page 7, sir, of
10 my report to Mr. Lutz.

11 HEARING EXAMINER VANCIL: On page 7 of
12 Exhibit 94; correct?

13 DR. CROMPTON: Page 7.

14 MR. LUTZ: Exhibit 94.

15 HEARING EXAMINER VANCIL: Thank you.

16 BY MR. LUTZ:

17 Q So let's now talk about -- you've talked about
18 residences, and you've talked a little bit earlier
19 about why your research has been limited to
20 residential properties. Can you please describe some
21 of the challenges studying commercial properties,
22 hotels, retail?

23 A There's not much research for commercial
24 properties. It's proprietary information. You don't
25 have access to the data. Basically, commercial

1 properties, the value is expressed in terms of rental
2 rates per square foot. And so that's proprietary.
3 It's not like Multiple Listing Services that I can get
4 access to it.

5 And, further, commercial properties don't turn
6 over very frequently, and so you don't have a market
7 value from that kind of perspective either. It's
8 really difficult to do. So I do not know of anybody
9 who has done hedonic analysis which has involved
10 commercial properties. There may be something out
11 there. I'm not familiar with it. If it is, it's very
12 rare, and I haven't seen it. So we don't have that
13 work.

14 Q Is there any research that you're aware of
15 that focused on premiums related to commercial
16 properties?

17 A Yeah, there is. I mean, the exemplar, if you
18 will, of this is a place called Bryant Park in New
19 York City. And Bryant Park actually backs on to the
20 New York City Public Library on Fifth Street. It's
21 about 32nd Street, I think -- I might have that
22 wrong -- in New York.

23 Bryant Park was in 1980 a delapidated park,
24 junkies, needles, all kinds of stuff went on there.
25 It's an 8-acre site, and it was -- nobody would go

1 near it. It was a rundown dump. It was surrounded by
2 a series of office buildings, about five or six office
3 buildings, high rises, around this park.

4 Those office buildings decided they would form
5 a BID, which is a business improvement district, by
6 which they go to the city and they say we want to tax
7 ourselves to fix up this park, and so they taxed
8 themselves based upon the square footage of their
9 properties. They taxed themselves to do it. And they
10 renovated the park, and I forget the exact number of
11 15 or 18 million or something to renovate this 8-acre
12 park.

13 And then they continue to operate and maintain
14 it, and their budget now is around 2 million a year to
15 operate this park. They did that because it was
16 adversely affecting the rents they could get for those
17 properties. And so Ernst & Young came along, which
18 you're aware is an accounting firm, and they have a
19 consulting arm as well. Ernst & Young came along and
20 were commissioned to do a study by -- not by those
21 businesses actually but by an advocacy group in New
22 York City.

23 Ernst & Young came along and did the study,
24 and they compared the rents at Bryant Park before the
25 renovation, after the renovation, and they went up by

1 whatever the percentage was. I've got it in the
2 report here someplace. And then they compared the
3 increases over that same period of time with other
4 areas -- with other similar locations in the New York
5 area, for example, Rockefeller Center which is
6 probably a mile away and a couple of other centers
7 that were close. How did the increase at the Bryant
8 Park site compare to these others? And it was much
9 higher.

10 And so it was confirmed then that, indeed,
11 commercial properties can benefit from a major upgrade
12 in a park, but it was the fronting properties only
13 that benefited from this. They were the BID. It was
14 not beyond that fronting properties. Those are the
15 people that put the money up and gained from this sort
16 of thing.

17 So that exemplar became something that was
18 replicated in a number of studies across America.
19 This is what happens when something works. You adapt
20 it. So in Houston, for example, we had Discovery
21 Green, and exactly the same thing happened. A 12-acre
22 park. The City put in about 85 million for this
23 12-acre park to create it.

24 Immediately, the properties around it, it shot
25 up in value as a result. The City got its money back.

1 Dallas did something similar in their business
2 district and so on around the country. You see this
3 over and over as a result of this. So there is
4 evidence, clearly, that improving parks improves
5 commercial values, but it's immediate. It's abutting.
6 And there's some good reasons for that.

7 The reasons, basically, are that people work
8 in their offices 8:00 in the morning until 5:00 at
9 night and they go home. They don't engage in leisure
10 in their office environment. So what they're
11 interested in is views that they get from their office
12 windows and that sort of stuff. They're not walking
13 distances, you know, in the middle of the day to go
14 recreate in a park someplace. So it doesn't have that
15 added value beyond the immediacy of the commercial
16 premise.

17 Q And so immediacy, is that, for example,
18 2,000 feet would be outside the scope of anticipated
19 benefit area?

20 A Oh, well, of course. Miles away, no, that
21 would have no impact.

22 Q Okay. So let me -- I'm sorry. I'm scrolling
23 down my list of questions.

24 So I guess the follow-on question is with
25 respect to Mr. Macaulay's final study is: Would it be

1 reasonable to extrapolate from commercial property
2 value increases abutting the park commercial property
3 value increases throughout the LID area anticipated
4 from the City of Seattle's Waterfront LID
5 improvements?

6 A I can only speculate on that, sir, but it was
7 clearly inappropriate to use my work to make that
8 extrapolation. And my discussion of Bryant Park is,
9 in fact, included in Exhibit 94 on page 18 -- 16 as an
10 appendix.

11 Q Okay.

12 A And that -- again, that extract is taken from
13 this book that I have coming out in the next couple of
14 weeks or so. It lays it all out what Bryant Park
15 (inaudible).

16 Q On page 56 of his final study, Mr. Macaulay
17 wrote that based on research conducted and discussed,
18 there is a positive impact on all property types
19 within a three-block radius of an improved park with a
20 lower, yet still measurable, impact on properties up
21 to 12 blocks away.

22 What research do you understand Mr. Macaulay
23 to be referencing at that point in the final study?

24 A I think the inference was that it related to
25 my work, but it does not. And my work did not -- does

1 not justify reaching those conclusions.

2 Q And did he refer to any other research that
3 you're aware of that justifies those conclusions?

4 A No, sir. My brief here is talk about parks
5 and trails and so on, and I can do that. But I can't
6 speak to streetscapes. Streetscapes is a different
7 area, and it's not an area I work in.

8 Q Okay. Let's move -- I'm sorry. Did you have
9 a question, Mr. Examiner?

10 HEARING EXAMINER VANCIL: No.

11 Q Okay. Well, let's move to the topic of
12 Mr. Macaulay's characterization of the LID
13 improvements as a park. Can we discuss your opinion
14 on that question?

15 A I have not had the advantage of coming to
16 Seattle and viewing the sites, so I'm restricted to
17 the views that I was given of the LID before and after
18 and the templates and the series of pictures of --
19 taken longitudinally along the Alaskan Way there about
20 what it would look like before and after if the LID
21 was imposed.

22 That is not a park. There is not a park. A
23 park is a tranquil area where people go to rest and
24 whatever. A park is a place that substitutes --
25 particularly for people who live in apartments and

1 multifamily places, it substitutes for a backyard.
2 You have barbecues. You socialize. You have benches.
3 I mean, that is not what my study is examining.

4 If you stretch this -- if that's characterized
5 as a park, it was not what my study was characterizing
6 as a park. To me it was a parkway. Parkway have a
7 very different history and very different rationale
8 from parks.

9 Q Let's talk about parkways and greenways. Can
10 you explain a little bit more what those mean -- what
11 those -- what those are and how they compare and
12 contrast, both of them, and a park?

13 A So parkways really grew out of their --
14 originally, they originated in Paris in the 1700s, the
15 great boulevards of Paris in the 1700s, and some of
16 the other European cities adopted them. Olmsted and
17 Vaux -- Fred Olmsted and Calvert Vaux were the leading
18 park developers in the United States. Enormous
19 influence in the whole of the latter half of the 19th
20 century from 1850 on to 1900.

21 And, in fact, the Olmsted firm, taken over by
22 his son, Rick Olmsted, Frederick Olmsted, Jr., went
23 all the way through the 1940s. The Olmsteds, they're
24 legendary figures. They were very familiar with the
25 European cities. They had both done the European

1 tour. They had been both over to see them.

2 When they brought it over to the American
3 context, they brought it over. They used the term
4 parkway instead of boulevard. Essentially, it was
5 sort of an Americanization of the term. And they
6 viewed it as a means of connecting major parks.

7 The idea was it was a recreational drive for
8 people. It would be -- if you wanted an analogy
9 today, I guess it's the Blue Ridge Parkway. You drive
10 recreationally. You admire the view as you drive by.
11 It was for recreational traffic. No commercial
12 traffic was allowed on that parkway.

13 And so Olmsted and Vaux developed a couple of
14 terrific parkways in New York City connecting things
15 in their Buffalo plan, Buffalo, of course, being a
16 trendier city in the late 1800s. The parkways are
17 magnificent in there. Kansas City, another trendier
18 city of the late 1800s, magnificent parkways. These
19 are recreational driveways, very nicely landscaped,
20 deep landscaping on the side.

21 When I look at what you have here, that's what
22 I'm seeing. I'm not seeing what I would term and what
23 my study is based upon on a park. To me it's a
24 parkway. You look at the -- I think somewhere along
25 the line, there was some analysis or other done

1 about -- about this thing. And I'm looking at
2 something that an architect at SODO -- I'm not sure
3 what SODO stands for.

4 Q That's SODO is an area, but I think referring
5 to Exhibit 101 --

6 A I think I've got 97 here.

7 Q Oh, 97? Okay. I apologize. Let's get to
8 that in a minute --

9 A All right. Okay.

10 Q -- just so I don't confuse myself.

11 A But the parkways is done for recreational
12 driving of people passing through it. In my role as a
13 city councilman, I'm all over the city all the time
14 planting trees, and it's a way you create ambience,
15 but that's not a park.

16 Q And are there studies that talk about
17 potential value impact or study -- potential value
18 impact of a parkway on adjacent properties?

19 A If you go back a ways, there are. They were
20 done in a naive era, though, and all kinds of
21 magnificent values were attributable to them. When in
22 reality way back, much of the value was probably --
23 their virtue was pre-freeways, if you like, restricted
24 freeways. And so I would say the answer to that is
25 I'm not aware of any contemporary studies that have

1 done that. They may be there. I'm not aware of them.

2 Q All right.

3 HEARING EXAMINER VANCIL: Mr. Lutz, let
4 me ask you to pause for just a moment. I wanted to
5 ask you about timing. What do you estimate your time
6 for Mr. Crompton on direct?

7 MR. LUTZ: I would say another hour.

8 HEARING EXAMINER VANCIL: All right.
9 Let's take a short break. We'll reconvene at 11:35,
10 and then we'll be stopping for lunch sometime after
11 noon depending where we are, 12:15 and 12:30. We'll
12 take a short break now and reconvene at 11:35. Thank
13 you.

14 MR. LUTZ: Thank you.

15 (A break was taken from 11:24 a.m. to
16 11:37 a.m.)

17 HEARING EXAMINER VANCIL: We'll return
18 to the record with Mr. Crompton on direct.

19 BY MR. LUTZ:

20 Q Now, so, Dr. Crompton, I apologize getting
21 those exhibits confused before. You were starting to
22 talk about Exhibit 97. Could we pull up Exhibit 97
23 for the Examiner and Ms. Thompson.

24 And so, Dr. Crompton, can you describe how
25 this -- first, describe what this drawing depicts to

1 your understanding, and then describe how it informs
2 your conclusion that what the city is proposing is a
3 parkway rather than a park.

4 A I reached that conclusion based upon two data
5 points, sir, and so let me refer to the first one
6 before I go to your exhibit. As best as I could work
7 out, the park improvements area appeared to be
8 36 acres. And I can't speak to the verification of
9 that, but that's the best I could figure out.

10 When I calculated it, two-thirds of that
11 36-acres appeared to be hardscape of one shape -- in
12 some shape or form. Those were my estimates. And
13 then I looked at this piece of information that's --
14 that I was given, which refers to your exhibit of
15 20 sectors, and an analysis that was done by I'm not
16 sure who. It doesn't say.

17 But this individual who looked at this SODO
18 region said, okay, you've got 20 sectors at 2.8 acres
19 each. That's 56 acres total. Twenty sectors of
20 landscape at .6 acres, which is 12 acres; 20 acres of
21 essential roadways at 1.03 acres; and 20 sectors of
22 hardscape at 1.17 acres, so he was -- he was
23 calculating 79 percent, if you extrapolate that to the
24 20 sectors. 79 percent was roadway or hardscape.
25 That, in my view, is not a park. 24 percent of it is

1 landscaping. 79 percent is hardscaping. That's not a
2 park, at least it's not in my book.

3 Q Okay. And you didn't -- you didn't commission
4 that, that study, so you're relying on the data?

5 A I'm just -- I'm not sure how I got my hands on
6 it, but it's -- it's in my papers here. I'm not sure
7 where it came from. Well, it came from your office.
8 You sent it to me in the discussions here.

9 HEARING EXAMINER VANCIL: Just a
10 moment, please. Ms. Thompson, are you having
11 connectivity issues?

12 MS. THOMPSON: Yes, unfortunately. I
13 keep getting kicked off the Zoom app. I can get back
14 on relatively quickly, but it just keeps happening, so
15 not really sure the best way to proceed.

16 HEARING EXAMINER VANCIL: Okay. So you
17 have been removed from it, and you are relogging in
18 completely each time?

19 MS. THOMPSON: Well, so the view pane
20 that we have right now, it disappears and then a box
21 pops up saying, you know, trying to reconnect me to
22 the room, basically.

23 HEARING EXAMINER VANCIL: Oh, can we
24 pause for just a moment for Ms. Thompson, and could
25 you simply log out of the meeting completely and come

1 back in through the invitation and see if that works?
2 It can be a bit tricky because sometimes the app will
3 continue running, so make sure you're disconnected
4 from it before you try to log back in and see if we
5 can get better connectivity.

6 MS. THOMPSON: Okay. Great. Thank
7 you.

8 HEARING EXAMINER VANCIL: We will go
9 off the record until we get her back and established.

10 MR. LUTZ: Understood. Thank you.

11 (A break was taken from 11:41 a.m. to
12 11:44 a.m.)

13 HEARING EXAMINER VANCIL: Let's go on
14 the record. I will try to keep an alert. If I see
15 your screen blacking out, Ms. Thompson, then I'll
16 assume you've lost connectivity again, and we can try
17 to address it. And I'll just pause things. You can
18 also use the -- if sometimes -- if anybody in the
19 hearing room is having problems being heard or the
20 video is not working, remember that the chat function
21 is on as well, and please don't single me out to
22 communicate with.

23 You can communicate individually with my legal
24 assistant if you need some assistance by chat, or you
25 can select everyone in meeting and alert me and

1 everyone that you're not connected or it may get
2 through that way. So if that's a possibility. Try
3 that, although I know you're probably pressing other
4 buttons at the same time.

5 All right. Let's proceed.

6 MR. LUTZ: And, Mr. Examiner, I'm going
7 to just make a little colloquy here with respect to
8 Exhibit 97. The material, which is Jim Brown of
9 SODO's analysis of specific areas and hardscape areas,
10 is an exhibit that was actually commissioned by Molly
11 Terwillinger and Darby DuComb. And it's the element
12 of their case that you left the record open so that
13 they could present it later, and I don't know that
14 that's actually been completed yet.

15 So I don't know that it already has a number,
16 and since we didn't commission Mr. Brown's work,
17 although it was reviewed by Dr. Crompton, I don't know
18 if you want to have it now just be demonstrative or
19 subject to connecting up when she -- when they finish
20 their admission of that as an exhibit or just
21 understand that that's how -- that's where we got the
22 information, you know, who commissioned the work. And
23 we provided it to Dr. Crompton for his review as part
24 of his analysis.

25 HEARING EXAMINER VANCIL: Understood.

1 Is there any reference on how to proceed from
2 Ms. Thompson?

3 MS. THOMPSON: Well, I mean, so this
4 Exhibit 97 was prepared by somebody who is not a
5 witness in this case. And I understand that
6 Mr. Crompton may have reviewed this, but he didn't
7 prepare it. And so there are some issues with, you
8 know, a proper foundation for this as an exhibit.

9 I suppose using it as a demonstrative would be
10 okay at this point, but, you know, the witness, not
11 having prepared it himself, I just hesitate to -- I
12 mean, it's just -- maybe, Mr. Lutz, is this a -- do
13 you know whether these are just two pages out of a
14 larger report or what other information you have about
15 this?

16 MR. LUTZ: The information I have is
17 that this is what Ms. DuComb asked Mr. Brown to
18 prepare and that it is to be submitted in her case as
19 an exhibit, presumably with a declaration describing
20 how Mr. Brown prepared the information and what stuff
21 he relied upon.

22 And we've relied upon it to provide to
23 Dr. Crompton for the calculations, assuming that they
24 were done professionally. He's a licensed architect
25 who does this stuff. So I think for Dr. Crompton to

1 use it right now as a demonstrative for even answering
2 a hypothetical question that assuming that these
3 calculations are correct, how does that inform your
4 decision subject to it being then finalized and more
5 foundation provided in the related case, that probably
6 is the most hygienic way to manage that, if that's
7 acceptable.

8 MS. THOMPSON: Okay. Yeah. I would
9 just note also that I believe that for
10 Ms. Terwilliger's case their record technically is
11 closed. I recalled that the hearing examiner gave
12 them an opportunity to coordinate with the Perkins
13 clients to present additional expert testimony or
14 reports, but this isn't that. So using it as a
15 demonstrative or to provide it as, you know,
16 hypothetical, I think that the City wouldn't object to
17 that but would object to it as becoming record
18 evidence at this point in time.

19 MR. LUTZ: And I guess one other
20 option, Mr. Examiner, would be if we can coordinate
21 with Ms. DuComb and Ms. Terwilliger right now perhaps
22 they can get that foundational declaration for
23 Exhibit 97 and we can submit that declaration later
24 today and hold this exhibit in abeyance if that's
25 preferred.

1 HEARING EXAMINER VANCIL: All right.
2 It looks like we're -- the best way to approach this
3 is -- Mr. Crompton's testimony was presented in such a
4 way as he wasn't owning the document. He indicated
5 clearly that he was -- this is based on what I see
6 here and based on what's in this.

7 So he wasn't speaking to the truth of the
8 document or trying to admit it into evidence. It can
9 certainly be used to proceed along those illustrative
10 lines under the broad allowance for evidence in the
11 hearing examiner's forum.

12 I have similar recollection as the City at
13 this time. Though with 20 days of hearing, I'm happy
14 to be corrected, that there was an opportunity for at
15 least one party to introduce some testimony, evidence,
16 and I think we've already been through another party
17 that did during the period set aside for the Perkins
18 Coie cases.

19 And so to agree that there is something more
20 coming with this document, it really has to happen
21 today as this is the end of this group of objectors'
22 opportunity to present, and we can leave that for a
23 later time treating this as an illustrative document
24 for the time being for purposes of Mr. Crompton's
25 testimony.

1 MR. LUTZ: That works. Thank you.

2 HEARING EXAMINER VANCIL: All right.

3 Just for ease of tracking and because Perkins Coie has
4 already done a very nice job -- I don't get this in
5 most of my hearings -- where the order of documents is
6 presented numerically and they're actually in the
7 order they're going to be presented in the hearing, I
8 don't want to throw that off. So we will simply leave
9 a gap and not admit Exhibit 97, and we'll proceed with
10 the same numbering, say, for 98, etc., as we go
11 forward.

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

13 Thank you, Ms. Thompson.

14 So let's move now to Exhibit 98.

15 HEARING EXAMINER VANCIL: I have

16 Exhibit 98 open.

17 BY MR. LUTZ:

18 Q Dr. Crompton, do you have Exhibit 98 open?

19 It's the deposition transcript.

20 HEARING EXAMINER VANCIL: And just to
21 note, I believe this is Mr. Lutz since, Mr. Crompton,
22 you and I and Mr. Lutz are the only three that have
23 our microphones on. I am hearing alert noises or
24 something coming from it sounds like Outlook noises.
25 I have silenced all of mine, so whoever that beeping

1 is coming from -- and given that Mr. Crompton is
2 remote with somebody else, I'm kind of guessing it's
3 you, Mr. Lutz. If there's a way you could silence
4 your e-mail or alerts coming in through Outlook so
5 we're not getting that on the record, I would
6 appreciate it.

7 MR. LUTZ: Could we take a two-minute
8 break? I might need to log out of Zoom in order to
9 click to the Outlook. I did it on my main computer,
10 and I forgot to do it on the laptop. That is me.

11 HEARING EXAMINER VANCIL: I won't speak
12 to your tech, but I -- at least in mine, I was able to
13 open Outlook at the same time as Zoom. And if you go
14 to your -- under file, look at your options, both mail
15 there's an alert sound, and then I believe it's under
16 maybe calendar or alerts there's another there. So if
17 you could silence those, that would be great. And
18 we'll take a -- we'll come back -- let's come back at
19 noon and give you plenty of time to do that.

20 MR. LUTZ: All right. Thank you,
21 Mr. Examiner.

22 (A break was taken from 11:54 a.m. to
23 12:00 p.m.)

24 HEARING EXAMINER VANCIL: Return to the
25 record.

1 Mr. Lutz, your witness.

2 MR. LUTZ: Thank you, Mr. Examiner, and
3 I think I fixed it.

4 BY MR. LUTZ:

5 Q So we have questions now that -- on Exhibit 98
6 that pertain to Mr. Macaulay's deposition testimony
7 that starts on page 178 at line 15 and goes all the
8 way to page 180 at line 2. And so it occurred to me
9 that it might be easier if before I asked these
10 questions, Mr. Examiner and Ms. Thompson, could read
11 those portions because that's what we're -- the next
12 couple questions are about.

13 HEARING EXAMINER VANCIL: How far down
14 are you on 179?

15 MR. LUTZ: It's essentially all of 179
16 and line one and two of page 80. And for the first
17 question, I'm going to start with line 3 of page 179.

18 BY MR. LUTZ:

19 Q So, Dr. Crompton, have you had a chance to
20 review these deposition segments?

21 A Yes, sir.

22 Q And you mentioned before that we had provided
23 you the deposition transcript as some of the
24 documentation to review in preparing your opinions.
25 So is this some of the information that you would have

1 been looking at to prepare your opinion?

2 A Yes, sir, it is.

3 Q Okay. Let's start with Mr. Macaulay's
4 description of the Pike/Pine improvements that it's at
5 line 3 and then talk also about Union Street and
6 Pioneer Square improvements.

7 Do you agree with Mr. Macaulay that the
8 Pike/Pine improvements are not parklike amenities?

9 A Correct. I agree they're streetscape
10 amenities, yes.

11 Q And what about the Union Street and Pioneer
12 Square improvements, are they park amenities or street
13 improvements?

14 A Pardon my geography, sir. Are those the
15 eastern prongs going out? They are streetscapes.

16 Q There's the eastern prong, and then there is
17 street improvements that get -- that connect east down
18 to the waterfront?

19 A Yeah. Those orange prongs out there, those
20 are streetscapes. They're not parks. Mr. Macaulay is
21 on side with that.

22 Q And you're referring to orange prongs, and,
23 Mr. Examiner and Ms. Thompson, that's in GIS -- in a
24 GIS exhibit that is part of Dr. Crompton's Exhibit 94.

25 A Appendix 2.

1 Q Appendix 2.

2 So could you please describe whether and, if
3 so, how, property value increases based on proximity
4 to park improvements would apply to the potential
5 property value increases attributable to the
6 Pike/Pine, Union Street, and Pioneer Square
7 improvements?

8 A Well, they're not pertinent. As I said
9 before, I don't do work on streetscapes, and I think
10 that the appraiser actually relied on some New York
11 studies or whatever. It certainly doesn't relate to
12 my work.

13 Q Okay. So now let's move on to Pier 58, the
14 Promenade, and the Overlook Walk. So this is
15 page 178, lines 15 to 21. Mr. Macaulay says we're
16 looking at the project as an entity, so the more
17 parklike amenities are the Promenade and the Overlook
18 Walk. So we're looking at it in terms -- in more
19 general in terms that we're saying, hey, it's going
20 from something that's average to above average to
21 excellent.

22 How do you respond to the assertion that the
23 Promenade and Overlook Walk area are parks?

24 A As I mentioned earlier, sir, when I look up
25 the proportion of land in there that is actually park

1 oriented, it's -- 79, 80 percent of it is hardscaped.
2 It's not a park. I don't know any parks where you
3 have a major roadway going right through the middle of
4 the thing. It's not a park. Promenade overlooking
5 the ocean and I -- that's about ocean views, and my
6 park work has nothing to say about that.

7 Q All right. So let's discuss the -- actually,
8 let's move to what's now been marked as Exhibit 99,
9 and I will -- well, do you recognize these renderings,
10 Dr. Crompton?

11 A Yes. You provided me with a full set of
12 those.

13 Q And do you recognize them as excerpts of the
14 addenda from the final study?

15 A Yes, sir, I do.

16 MR. LUTZ: I'd move that Exhibit 99 be
17 admitted.

18 HEARING EXAMINER VANCIL: Any objection
19 to Exhibit 99?

20 MS. THOMPSON: Apologies. My
21 connection went out again, so I'm behind here. I
22 would -- I keep having these issues. So one
23 suggestion I would make -- and I'm sitting, like,
24 right next to my router, so I don't know why this is
25 happening today.

1 But since we're close to, you know, a lunch
2 break time period, possibly I could go into the office
3 to use the more reliable internet. I would have time
4 over the lunch break to travel to the office and set
5 things up there, and maybe then we can proceed more
6 smoothly.

7 HEARING EXAMINER VANCIL: Okay. I
8 certainly don't want to do anything that compels you
9 to not stay at home or go into the office, but if
10 that's -- in your own personal judgment, you
11 determined that that's okay and safe for you to do and
12 are willing to do that, I'm certainly willing to put
13 the hearing on hold to give you the opportunity to
14 improve connectivity.

15 Obviously, with Mr. Lutz indicating I think
16 sometime around 11:30 he had an hour to go and we've
17 mostly done tech stuff with a couple questions in
18 between, we've got plenty more to go on direct, and
19 then there's going to be cross. And we've got closing
20 today as well, and maybe that will give Ms. DuComb and
21 Terwilliger a chance to work with Mr. Lutz to finalize
22 whatever it was they were intending with their
23 document as well.

24 Any issues with that, Mr. Lutz, if we take a
25 break for lunch and come back?

1 MR. LUTZ: Not at all. I would only
2 ask Dr. Crompton if there are any limits on the end of
3 your day which might extend past 5:00 p.m.?

4 THE WITNESS: I have a council meeting
5 at 5:00 p.m., but in the interest of this meeting, I
6 will just request their indulgence. And I'll show up
7 later at the council meeting. We are discussing our
8 stay-at-home and our ordinances and all that. It's
9 serious stuff. If we can be done before 5:00, I would
10 really appreciate it. If we can't, I will give this
11 priority.

12 HEARING EXAMINER VANCIL: Thank you.

13 We certainly all hope we're done well before
14 5:00, but we'll do our best.

15 Yes, we will take a break for lunch and
16 reconvene at 1:15. Is that adequate time for you to
17 get down to your office and get established,
18 Ms. Thompson? Let me try chatting with her and see if
19 that works.

20 MR. LUTZ: 1:30 is fine, too,
21 Mr. Examiner, whatever she needs.

22 HEARING EXAMINER VANCIL: Yeah. I
23 don't want to set a time and then have it not work.

24 MS. THOMPSON: Yes. 1:15 is great.

25 HEARING EXAMINER VANCIL: Okay. We'll

1 reconvene at 1:15. Thank you, everyone.

2 MR. LUTZ: Thank you.

3 (A luncheon recess was taken from
4 12:12 p.m. to 1:16 p.m.)

5 HEARING EXAMINER VANCIL: Welcome,
6 Ms. Thompson. Thank you again for accommodating
7 things by moving your location. It's very much
8 appreciated.

9 MR. LUTZ: Ready to start?

10 HEARING EXAMINER VANCIL: Yes. We're
11 back on the record unless there's any new procedural
12 issue that's come up in the break that needs to be
13 addressed?

14 MR. LUTZ: No.

15 BY MR. LUTZ:

16 Q So, Dr. Crompton, we were just getting started
17 with Exhibit 99, exhibits about the renderings from
18 the addenda. And have you had a chance to go through
19 the set of pictures before we started asking the
20 questions?

21 A Yes, sir, I have.

22 MR. LUTZ: And, Mr. Examiner, have you
23 had a chance to just scroll through those?

24 HEARING EXAMINER VANCIL: I'm aware of
25 the pictures, yes.

1 BY MR. LUTZ:

2 Q Okay. So, Dr. Crompton, can you describe how
3 these pictures are relevant to your conclusions that
4 the LID components, the Promenade, the Overlook Walk,
5 and Pier 58, are not a park?

6 A Well, I compared No. 3 in your -- in the
7 packet that you sent me, Mr. Lutz, and No. 8, and as I
8 understand and interpret this, the third one was the
9 current situation that existed. And No. 8 was after
10 the LID would be imposed. Is that a correct
11 interpretation?

12 Q Well, now I'm afraid you might have the wrong
13 pictures. Do you have the one that shows the viaduct?

14 A I have -- these show longitudinal shots down
15 the parkway.

16 Q Okay. Can you just hold it up just to make
17 sure we're on the same exhibit?

18 A (Witness complies.)

19 Q Okay. Perfect. That's the right one.

20 A So I'm looking at No. 3, which I assumed was
21 the current situation, and then I looked at No. 8 in
22 that pile, which I assumed was the additional
23 landscaping introduced by the LID park improvements.
24 Is that a correct interpretation?

25 Q Well, actually, the way it shows up on my

1 computer is you go -- is if you just start at the top,
2 you'll have a picture of the hypothetical with the
3 WashDOT improvements. So if I look at, for example,
4 exhibit page 1, that's hypothesized WashDOT
5 improvements.

6 And then page 2 would be hypothesized LID
7 improvements.

8 Page 3 is, which you were just referring to,
9 is hypothesized road improvements. Calling it current
10 is probably the right way that Mr. Macaulay thinks
11 about it because it's the before, but it is also
12 including the hypothetical that the Department of
13 Transportation did its project as opposed to
14 something -- as opposed to what's now proposed for the
15 LID.

16 A So the date, Mr. Lutz, was, as I look along
17 that, that has the character to me of a parkway. You
18 have traffic moving down a well-landscaped avenue,
19 boulevard, down there. So to me that was parkway.

20 And so as I said earlier, the appraiser used
21 other information about streetscapes, and he may well
22 have drawn some conclusions from that which is outside
23 my area of expertise, but that does not represent a
24 park in the sense that my studies were investigating
25 parks.

1 Q And I guess to ask a specific question: If we
2 looked at -- and I'll just go to page 3 of this pdf,
3 exhibit page 3, and if you compare exhibit page 3 and
4 exhibit page 4, which has a lot more greenery in it --

5 A Right. But it's landscaping. That's my
6 point.

7 Q And I guess that was my question for you was:
8 Do those changes of additional greenery and hardscape
9 modifications change it from parkway to something
10 else? I think your answer is no, but if you could
11 just --

12 A The answer is no. In my mind, what those
13 pictures are showing would not qualify as a park in
14 the studies that I reviewed on which my findings were
15 based.

16 MR. LUTZ: Okay. Mr. Examiner, I'd
17 like to move admission of Exhibit 99.

18 HEARING EXAMINER VANCIL: Any objection
19 to 99?

20 MS. THOMPSON: No objection.

21 HEARING EXAMINER VANCIL: Ninety-nine
22 is admitted.

23 (Exhibit 99 was admitted.)

24 BY MR. LUTZ:

25 Q And so let's hold on, sorry, a second, just

1 scrolling forward.

2 Now I would like to move to Exhibit 100, which
3 is, for the Examiner's benefit, a subset of renderings
4 that were introduced as a larger package with Anthony
5 Gibbons's testimony, so we've excerpted it.

6 And, Dr. Macaulay, do you have Exhibit 100 in
7 front of you?

8 A Yes, sir, I do.

9 Q Okay. And have you reviewed that in the
10 course of developing your opinion?

11 A Yes, sir.

12 Q And so just take a minute, if we can, to
13 scroll through these before I start asking you
14 questions, Mr. Examiner and Ms. Thompson.

15 A Let me, if I may, sort of preempt a long
16 discussion of this and tell you what my views are
17 after looking at them. You have presented me with six
18 different areas within this, and each of those has a
19 current, a no LID, and the LID. There are three
20 options for each.

21 And as I look at those six, five of them, in
22 my mind, are streetscapes, but the exception is
23 Number 4, which is the Waterfront Park option, and I
24 believe that that would qualify as a park. It's a
25 nice plaza that's out there.

1 And that is probably -- I hypothesize that is
2 an asset to the immediate local properties. It's not
3 a passive park, however. It's kind of streetscape
4 you'd see on Paris Boulevard with people having
5 umbrellas out and socializing out there, but you
6 could -- Number 4 could fit the park, but it would be
7 fairly immediate. It would be the immediate
8 properties who would stroll over there for a coffee or
9 whatever and enjoy that. But five of the six in my --
10 in my estimation are streetscapes.

11 Q Okay. Thank you.

12 And one other topic that we've talked about
13 already in general was about views, but to start with
14 here, the very first picture is a current condition
15 which at that point was the viaduct. Do you think
16 that there's a measurable -- would you expect a
17 measurable value impact to some set of adjacent
18 properties from removal of the viaduct?

19 A Absolutely. And, in fact, if you -- we did a
20 paper on this. If you go to the journal called
21 Leisure Science -- you will find it online -- it's
22 been approved. It's been through the review process
23 where, in fact, we looked at the impacts of views on
24 properties.

25 And so there's no question that removing that

1 disamenity, which is confronting those properties,
2 will clearly add -- and giving them a view of the
3 ocean will clearly add substantially to their value,
4 those immediately facing onto the viaduct.

5 MR. LUTZ: Mr. Examiner, I would like
6 to move admission of this excerpt of previously
7 admitted Exhibit I think it's 15 as Exhibit 100.

8 HEARING EXAMINER VANCIL: Any objection
9 to Exhibit 100?

10 MS. THOMPSON: No objection.

11 HEARING EXAMINER VANCIL: One hundred
12 is admitted.

13 (Exhibit 100 was admitted.)

14 Q Okay. So we've talked before in your
15 testimony about the extent of which a parkway may or
16 may not affect adjacent values. On page 94 of your
17 report, you state that suggesting the greenscape in
18 the LID as a park is a misrepresentation.

19 You've just talked about Pier 58, the park
20 deck, as the potential park component. Can you talk
21 about how those views inform your opinion of
22 Mr. Macaulay's final study?

23 HEARING EXAMINER VANCIL: Mr. Lutz --

24 A I've lost track of what the question was.

25 Q I'm sorry.

1 HEARING EXAMINER VANCIL: Just a
2 moment. Yeah, in general, if I could ask you to
3 tighten up your questions, it's getting a little
4 conversational. It's certainly bleeding into leading.
5 Specifically, I want to stop you because you made a
6 reference to page 94. Was that Exhibit 94?

7 MR. LUTZ: I'm sorry. You're right.
8 Correct.

9 HEARING EXAMINER VANCIL: If you could
10 tighten up and rephrase that question and just keep
11 that tightening in mind as we proceed, it would be
12 helpful.

13 MR. LUTZ: Yes, sir. My apologies.

14 BY MR. LUTZ:

15 Q Dr. Crompton, on page 3 of your report,
16 Exhibit 94, you state: Suggesting the greenscapes in
17 the LID as a park is a misrepresentation.

18 You just mentioned, in connection with the
19 last exhibit, that there's one component that you
20 think could be considered a park, and I just want to
21 ask how that -- those two conclusions inform your
22 review of Dr. -- excuse me. Mr. Macaulay's final
23 study?

24 A Well, I think it may well be appropriate for
25 him to apply my work to that plaza site. I think

1 that's a reasonable extension. I mean, it's a bit of
2 a stretch, because it's not a -- it's not what we
3 typically think of a park as greenery and so on. It's
4 hardscape.

5 It has some of the elements, socialization and
6 the benches and the socialization in the neighborhood
7 kind of connotations that you associate with a park.
8 So you could stretch it to that area. I wouldn't
9 object violently if he did. I would regard it as a
10 stretch.

11 Q Okay. And let's talk about the other. We
12 talked about the greening up of the LID improvements
13 compared to the proposed WashDOT improvements. Is it
14 fair at all to think of some component of that as a
15 greenway?

16 A Greenways are different phenomena from
17 parkways. Greenways really emerged in the 1980s as a
18 term, and they emerged from the present Commission on
19 America Outdoors in 1989 which argued it wanted to see
20 greenways all across America. And by greenways, they
21 meant trails, and they were -- specifically had in
22 mind the Rails to Trails kind of movement.

23 You have one in your own backyard. One of the
24 early ones was the Burke-Gilman Trail there, and there
25 are 25,000 miles of those trails across America, the

1 railroads to trails. So they had in mind narrow
2 trails many times retrofitted through existing
3 neighborhoods, and they called those greenways
4 indicating they were trails. They were
5 transportation. They were ways.

6 But they had a green component because often
7 they were passing through rural areas or passing along
8 floodplain areas because that's often where the land
9 is available to put these kinds of trails in. So that
10 term "greenways" emerged in the '80s. It became
11 popular in the '90s for a couple of reasons.

12 First, the feds provided an awful lot of money
13 for greenways. They gave cities 80 percent grants.
14 So the transportation bill and every transportation
15 bill since has had it. The city puts up 20 percent,
16 and the feds put up 80 percent. That's pretty much an
17 incentive to build these greenway trails. That's very
18 different from parkway, which has major -- is a major
19 highway.

20 Q And to go a little bit further on this
21 greenway topic, even though you're resisting any --
22 anything other than a parkway characterization,
23 describe what your 2004 research found with respect to
24 the impact of trails or greenways on adjacent property
25 values.

1 A So there was no 2004 article. So there was --
2 I did -- let me get the date right here. In 2001, the
3 same year that I did my benchmark piece for parks, I
4 did a benchmark piece for trails, and it appeared in
5 the Journal of Park and Recreation administration in
6 2001. It was called "The Sections of How the Presence
7 of Greenway Trails Affects the Value of Proximate
8 Properties."

9 The bottom line on that was -- and I quote
10 from the abstract of the article -- the dominant
11 prevailing sentiment was that the presence of a trail
12 had a mutual impact on the salability on value of
13 property.

14 In other words, it wasn't a negative. It
15 wasn't a positive. The prevailing sentiment was it
16 had a neutral impact. But let me again emphasize that
17 was an early benchmark study, and the data we were
18 using was -- was naive by present research standards.

19 Q Okay. And so what is your current
20 understanding of the impact of greenways and trails on
21 the value of proximate property?

22 A Well, just as we --

23 MS. THOMPSON: Objection.

24 A Excuse me.

25 MS. THOMPSON: Relevance. He's already

1 testified that the -- in his opinion the improvements
2 are not greenway improvements, but they would qualify
3 as streetscape improvements.

4 HEARING EXAMINER VANCIL: Mr. Lutz,
5 your response?

6 MR. LUTZ: I'm offering it to the
7 extent that they're considered greenways, how his
8 research has informed the issue of valuation of
9 properties adjacent to greenways as opposed to parks
10 and as opposed to parkways.

11 HEARING EXAMINER VANCIL: Right. But
12 if your own witness is saying that it's not a greenway
13 and no one else is suggesting it, how is it relevant
14 to the hearing?

15 MR. LUTZ: We can go on.

16 HEARING EXAMINER VANCIL: Okay.
17 Sustained.

18 MR. LUTZ: And I think what that means
19 is if -- is that we will not need to offer
20 Dr. Crompton's Exhibit 101 report.

21 HEARING EXAMINER VANCIL: Okay. We'll
22 leave that as a gap in the numbering then and not
23 admit No. 101.

24 BY MR. LUTZ:

25 Q Okay. I'd like to move on now to the next

1 topic, which is the distance for which the impact on
2 property values extends from a park. So could you
3 describe, Dr. Crompton, first, at page 5 and 6 what
4 your 2001 study that Mr. Macaulay relied on found with
5 respect to potential park -- proximate park impact
6 distances?

7 A So you're asking me to look up my 2001
8 article, pages 5 and 6, sir, or are you asking me to
9 look at my report?

10 Q Your report on page 5 and 6, which references
11 the 2001 distance plug approximations.

12 A So the -- both the 2001 and the '19 or 2020
13 updates recognize that most of the impact came within
14 500 feet of the -- of a park. As I explained earlier,
15 it could go out to 2,000 feet for community parks, and
16 I explained earlier what the rationale for that was.

17 Q Okay. And so sorry. I'm trying to not stray.
18 Would your 2001 research inform value lifts on
19 industrial, retail, office, hotel, multifamily within
20 500 feet of a park or 2,000 --

21 A As I explained earlier, it was very much
22 exclusively to residential dwellings.

23 Q Okay.

24 A When you're talking about residential
25 properties, like a hotel, the criteria are somewhat

1 different. You stay in a hotel because of its several
2 amenities, because of its proximity to where you're
3 going. It's a temporary stay. It's not a permanent
4 stay. It's a different phenomenon than residential
5 dwellings.

6 Q Okay. Well, so how does your research inform
7 your review of -- well, before we get to that, what
8 difference -- what difference is there between your
9 2001 research and your 2019 research with respect to
10 potential property lifts outside the 500-foot area to
11 the 2,000-foot potential extent?

12 A I mean, the two -- the 2019 paper says that it
13 really confirms what was found in the 2001 paper with
14 respect to that 500- and 2,000-foot limit.

15 Q And so the bulk of the benefit is within
16 500 feet and --

17 A Yes.

18 Q And how do you tease out the extent to which
19 it goes past 500 to 2,000?

20 A You know, you can put a whole lot of variables
21 in the market, but at some point the variables become
22 confounding. If you go out 2,000 feet, you're really
23 stretching it, because now you're looking at what's
24 the compounding impact of another park which is over
25 here 1,500 feet away. Does that impact the value more

1 than this one? You get confounding variables.

2 So 2,000 feet is a stretch. You sure can't go
3 much more than that, if any more than that, because
4 all of the other factors now impinge on your model.
5 And it just -- you know, it really blows your model
6 up. You can't handle it. It's too many variables.

7 Q Okay. Well, now let's go back to one of the
8 topics you started to testify a while ago about, feet
9 verse blocks. Can you talk about how that issue
10 informs your opinion with respect to Mr. Macaulay's
11 final study?

12 A Well, in my -- in my scientific publications,
13 I referred only to feet. When it came to doing my
14 professional audience translation for that in the 2004
15 book or the one I've just done, I reified that, like
16 concretized it so that people could understand what
17 500 feet was. And I said, well, it's typically, based
18 upon the studies which we've been reviewing, these
19 blocks are typically 150, 200 feet blocks, so about
20 three blocks out.

21 And in my plug-and-chug model, it says
22 500 feet or three blocks. Mr. Macaulay's application
23 of that was different. In his -- in his write-up, he
24 said 500 feet, comma, or three blocks. That infers
25 that they are options. You can use one or the other.

1 That was not my intent at all. That comma really, in
2 my mind, changes the inference.

3 My intent was to solidify or reify the
4 500-foot model, not to say they were alternatives.
5 And so from that point on, Mr. Macaulay's uses three
6 blocks. Clearly, in Seattle context, that doesn't
7 work because three blocks gets you to 900 feet, my
8 understanding is, in Seattle, not 500 feet.

9 And so one of the things I did was I requested
10 you to produce for me a GIS map of what 500 feet and
11 2,000 feet would look like. One of the challenges
12 with Mr. Macaulay's interpretation is that he's
13 measuring blocks, and let me use the phrase "as the
14 crow flies." That is from point A to point B if you
15 fly over the top. All of the analysis that we do in
16 this work don't use that as their modus operandi.
17 They use what we call network analysis, and that is
18 how people travel down the roads to get to the park.
19 And they can't go across the top. They have to go
20 around some of these things to get to a park.

21 And so when I asked you all to produce for me
22 was a map which has showed network analysis, and I
23 included that as Appendix 2 in my report.

24 Q Let's actually focus on that. That would be
25 Exhibit 94 of Dr. Crompton's report, I believe

1 page 19, Appendix 2.

2 HEARING EXAMINER VANCIL: Do you have a
3 question about that?

4 MR. LUTZ: Well, I was going to ask
5 questions. I wanted to get us to it first so
6 Dr. Crompton can testify from it, and you -- and you
7 and Ms. Thompson can be reviewing it at the same time.

8 HEARING EXAMINER VANCIL: Okay.

9 BY MR. LUTZ:

10 Q So, Dr. Crompton, you started to talk about
11 road network difference --

12 A Yes.

13 Q -- or distance. Can you talk about it from
14 the perspective of Appendix 2, what you're trying to
15 demonstrate here?

16 A So what I'm doing here is I'm taking my -- the
17 2,000-foot measure, which is the yellow, and I asked
18 the GIS -- or GIS person to track it using the network
19 feature of GIS. And she came up with -- I think it
20 was a lady who did it for you. Came up with the
21 yellow boundaries that you see there.

22 And then I asked her also to do the network
23 analysis, and you see the green lines there. And the
24 green lines would be the 500-foot road network
25 analysis. So if you look at the green lines and you

1 look at the park improvements, which I don't accept
2 are park improvements, but given that they were, you
3 go out typically two blocks, maybe one block, in some
4 cases, for the 500 mark.

5 And the 1,200-foot mark -- I mean, there's a
6 whole lot of outliers there that don't fall into that
7 2,000 yellow feature at all and way beyond the
8 boundaries of my park analysis, even if one accepted
9 they were -- this park analysis was a legitimate
10 analogy.

11 Q And so how does this type of GIS analysis
12 inform your opinion of Mr. Macaulay's use of the 3-
13 and 12-block limits as opposed to the foot --

14 A Mr. Macaulay measured 12 blocks from the
15 improvements. That's as the crow flies. And the
16 point is that people don't fly as the crow flies.
17 They have to go around roads, and the GIS feature
18 gives you that.

19 Q And if you have 12 blocks as opposed to
20 2,000 feet, how does this GIS mapping inform that
21 differentiation?

22 A I mean, it's self-explanatory. You've got
23 12 blocks, and you've got the network. And you see
24 the difference. That's why I asked this diagram to be
25 done.

1 Q Okay. Thank you.

2 So based on your research, is there any reason
3 to expect positive impacts extending out to the limits
4 of this LID boundary?

5 A No. There's -- if you're going to accept my
6 research, then, in my view, it wouldn't extend beyond
7 the green lines, and I wouldn't even accept those.
8 Because, as I said, with the exception of that one
9 Waterfront Park there, it's not a park. It's a
10 parkway. And I can't speak to parkway. It's
11 streetscapes. It's different.

12 Q Okay. Thank you.

13 Let me just find my -- I'm having trouble
14 activating my scroll function. There we go.

15 So now let's go back to page 83 of
16 Mr. Macaulay's final study. We talked before about
17 this 75 percent/25 percent ratio of park benefits
18 within and outside of the 500-foot/2,000-foot --

19 A If this was a genuine park out there, given
20 the limited size and scope of it, people would not
21 travel. The 75 percent simply is not relevant based
22 upon my work to this assumption.

23 I mean, even if it were park and, in my view,
24 it's not, it doesn't have the features of a community
25 park, all of the amenities that people will come down

1 to that I described earlier and the definition of
2 Seattle what a community park is.

3 Q Okay. So now let's move on to another topic,
4 use of the park qualities scale.

5 Your 2004 book contained a park quality scale
6 for determining proximate premiums. Can you explain
7 what that is and how you intended it to be used?

8 A We're talking about the park quality scale?

9 Q Yes.

10 A Well, this is part of the plug-and-chug deal,
11 and so I defined parks with five categories from
12 unusual excellence, above average, average, below
13 average, dispirited/blighted, and I describe what they
14 were. And it was intended to be a scale from 1 to 5,
15 a graduated scale, and you would use that as a
16 criteria to score your parks as it were.

17 And so I in my -- obviously, you don't get a
18 premium, a plus premium, for below average and
19 dispirited parks. And so I lessened my premiums to
20 three categories -- average, above average, and
21 unusual excellence. And as I explained before,
22 average would be the main part of the bell curve.
23 Above average would be one standard deviation out, and
24 unusual excellence two standard deviations out. And I
25 put a plug-and-chug number associated with each of the

1 excerpts. So I'm introducing a quality component to
2 500-foot range.

3 Q Okay. If we look at your report at pages 8
4 and 9, Mr. Macaulay references and appears to rely on
5 this park qualities scale in his final study, and it
6 would be page 46 and 47 of his final study. Can you
7 describe your reaction to his use of your research on
8 the quality parks scale?

9 A My park quality scale relates to parks, and
10 it's carefully thought out. You can't take -- you
11 can't read that park qualities scale and say it
12 applies to this -- to what he's calling parklike
13 improvements. It doesn't. I mean, it makes no sense
14 to take those values and relate them to that
15 situation. So there's no connection between my
16 parklike quality scale and the physical phenomenon
17 that he's describing here.

18 He goes on to -- underneath in his report, to
19 talk about condominiums within a three-block radius
20 typically experience increases in property value of.
21 And then he has -- I don't follow what he's doing
22 here, but he has excellent/average one block, 16 to
23 20 percent premium, and I don't know where that came
24 from. It didn't come from any of my numbers.

25 And then he goes on, excellent, above average,

1 average, poor as he goes on down, and he's taken those
2 from my -- excellent, above average, average he's
3 taken those from, indeed, my 2004 study in those.

4 But then he has made some kind of arbitrary
5 judgment, and I don't know how he got from A to B
6 here. But he's says that he's moving -- by producing
7 these parkway improvements, he's moving the thing from
8 an average to an excellent level or whatever. He
9 hasn't got any criteria to do that. The criteria he's
10 using do not match what he's actually doing here.

11 And so I respect the appraiser's judgment.
12 It's a judgment call on his part as to whether he's
13 moving from an average to above average to excellent,
14 and that's his call. But it's not appropriate for him
15 to stick -- use my research to justify that because
16 there's no connection between the two. That's his
17 judgmental decision. It's not based upon my research
18 conclusions.

19 Q And he talks about a green premium. Do you
20 have any understanding of research on that topic?

21 A I do not. So that is a term that the
22 appraiser has generated.

23 Q So besides the table, do you have any other
24 concerns with how Mr. Macaulay has described his use
25 of your research in particular with respect to the

1 park scale?

2 A Not really. I mean, he's -- he's used -- I
3 have problems with his use of my quality scale to
4 justify his -- what is his appraiser's judgment, which
5 I respect, but it's not justified by my park quality
6 scale.

7 He has used a blocks measure, as far as I'm
8 concerned, inappropriately, and that green premium
9 first excellence, whatever he has put on the front of
10 it. What is his term here? Excellent average, that's
11 something he's generated, and he -- let me leave it at
12 that point.

13 Q Okay. And then one final question, just to
14 close this off, can you talk about, then again, what
15 the percentage -- if you assume hypothetically that
16 we're talking about both a park and an excellent
17 park -- and I know you don't accept either of those
18 propositions, what did -- what was the result of your
19 2019 research in terms of the reduction of anticipated
20 property lift from an excellent park?

21 A Excuse me while I try to find that document.

22 Q You are not alone.

23 A I can't put my hand on the document, but it's
24 the Appendix 3 document where I change the values from
25 15, 10, 5, and I think I used in that document -- here

1 it is. I think I used in that document 10, 5, 3.

2 Here, I have it.

3 Unusual excellence, 10 percent; above average,
4 5 percent; average, 3 percent. So if you take his
5 judgment, his appraising judgment, and say it's
6 average, whatever it is, at 3 percent and you're one
7 standard deviation out, you've got to unusual
8 excellence, then you increase it by 7 percent. That's
9 what this would say.

10 Q And so if your 2004 report said a 20 percent
11 lift for an excellent park and your 2019 research said
12 a 10 percent lift, if you hypothetically assume it is
13 a park and it is an excellent park, you would still
14 reduce -- your research would suggest a 50 percent
15 reduction in benefit. Is that a fair
16 characterization?

17 A And that's what we found in the scientific
18 studies, so it's just reflecting that.

19 Q Thank you. I'm going to move on to another
20 topic, and I've only got two to go. We've touched on
21 it before.

22 But can you talk about negative impacts on
23 disamenities on premiums, what they are and how you --
24 how they inform your review of Dr. -- or
25 Mr. Macaulay's final study?

1 A So if you go back to my scientific studies,
2 they report that there is a disamenity, that is if
3 you're physically abutting a park, there are sometimes
4 negative premiums and not positive premiums. And
5 those emanate from things like congestion, increased
6 traffic flow, lack of parking, unwarranted off street
7 parking, litter, vandalism, intrusive lighting, and
8 groups engaging in morally offensive activities.

9 So if any of that lot are there, then it
10 probably, if you back on or front on to that park, it
11 decreases in value. We call them disamenities. And
12 spell check in Microsoft doesn't like disamenities.
13 It's my own word, I guess, but that's what they are.

14 And so Mr. Macaulay in his report alludes to
15 two. He says there's going to be additional tourists
16 in the area, and I think the number he uses is -- let
17 me find that. So I think he says one and a half
18 million extra -- yeah, 1.5 million visitors to the
19 immediate area were coming there.

20 1.5 net new visitors is a lot of folks. You
21 divide that by 365, and you've got 4,000 a day. And
22 so it doesn't come evenly spread over the days. So if
23 you're running 6, 8, 10,000 more people coming down
24 there a day, I suspect that some of those properties
25 that face on to that, that's going to be a disamenity.

1 They're not going to appreciate that many more
2 tourists. I think of The High Line in New York City
3 which is the same kind of phenomenon, just
4 overwhelming the local area.

5 And the second thing he alludes to is there's
6 a loss of parking spaces down there. So I have no
7 means of knowing and I'm not going to speculate
8 whether they were considered in his report, but he
9 does mention them in passing. He acknowledges them.
10 He does not in this report specify in any way how he
11 took those into account.

12 Q Okay. And all right. I think we'll move on
13 to our final topic, the diminishing marginal value of
14 premiums. And can you describe what your and other
15 research shows about premiums on properties that are
16 proximate to both parks and water amenities?

17 A And so this -- my research has not
18 investigated this phenomenon. So let me explain where
19 I'm coming from. It alludes to -- or it stems from
20 something called prospect theory. And I know as soon
21 as I talk to professionals in other fields about
22 theory, the people switch out on me, but bear with me.

23 The prospect theory was developed in the late
24 '70s by Danny Kahneman and Amos Tversky at Princeton
25 University, and they came up -- they were -- they're

1 both psychologists, and they said economists, you
2 know, they assume -- first of all, people are full of
3 information. They assume that people act rationally,
4 and they assume that they act in a timely fashion.

5 And he said we're psychologists. They don't
6 do any of those things. So they founded a whole new
7 field called behavioral economics which has totally
8 transformed the economics discipline. So one of the
9 founding theories of behavioral economics is prospect
10 theory.

11 One dimension of prospect theory is what we
12 call diminishing marginal valuation of premiums. The
13 best way I can explain that to you is I've put a
14 diagram in my report. If I could refer you to page 13
15 in my report, that diagram in front of you would very
16 much make it easier for me to explain this concept in
17 simple, layperson's terms.

18 Q And you're talking about at the top of
19 page 13?

20 A Yes, sir.

21 Q Okay. So please describe what the graph
22 shows.

23 A So what I've got on the left-hand vertical
24 axis I've written: Received premium of a greenway
25 value. And greenway -- I'm using greenway as sort of

1 a halfway term between parkway and parks.

2 And what it's showing is that -- I've just
3 used arbitrary units of analysis up on that left going
4 in half units, whatever those units might be. You can
5 call them whatever you like.

6 And on the horizontal axis, I have put the
7 increments of benefit you would receive from this
8 parkway, park, whatever it is. You will see that the
9 first 10 percent of benefit that comes in you get a
10 full Number 1 increment of benefit. Now, if I go to
11 the 10 percent between 40 and 50 percent, you will see
12 that rather than getting a full one unit of benefit,
13 you probably get about one-tenth of a unit of benefit.

14 What I'm showing you is that as a premium gets
15 higher AND adding to it, a perceived amount of benefit
16 is much less than when you don't have that high
17 premium to start with. And Danny Kahneman in a
18 subsequent book he wrote explains it in these ways,
19 and I'll use the analogy. And then I'll come back to
20 explain in more detail.

21 Kahneman writes: Turning on a weak light --
22 so this on page 13 also into that diagram. Turning on
23 a weak light has a large impact in a darkroom. The
24 same increment of light may be undetectable in a
25 brightly illuminated room. Similarly, the subjective

1 difference between \$900 and \$1,000 is much smaller
2 than the difference between \$100 and \$200.

3 And so if you, for example, take your car in
4 to be repaired and the guy says it's 900,000 -- is
5 \$900, would you like this additional bit of service
6 for another 100 bucks, you're going to say -- it would
7 be 1,000, you say, oh, sure, yeah. But if you're in
8 there and the bill is 100 bucks and he says would you
9 like this additional new thing for another 100 to 200,
10 you're going to say, wait a minute, that's a
11 50 percent increase. No, thank you. In other words,
12 the perceived benefit as the premium gets higher is
13 much less.

14 So what you've got in your situation, I
15 believe -- and I have not been on the site, but I
16 believe that most of the premiums in the properties
17 that are in this LID area is a view premium over the
18 ocean. And I have no means of knowing what that view
19 premium is, but let me take an arbitrary number of
20 50 percent and say let's assume they pay 50 percent
21 more for a property looking over the ocean than they
22 would pay elsewhere in Seattle looking over another
23 housing estate.

24 Well, you add to that 50 percent the park
25 improvements here, those park improvements on that

1 housing estate elsewhere in Seattle might get you a
2 5 percent gain. When you add that on to something
3 that's already got a 50 percent premium when somebody
4 comes to buy that property it's going to be
5 insignificant. It's insignificant even the total
6 value. It's a diminishing marginal utility in the way
7 people perceive things.

8 And it was not in the appraiser's brief to
9 value views, but it's important because if it's a very
10 large number, it diminishes the value of whatever the
11 improvements you put in here. I looked at some --
12 there's another paper inevitably where we look at
13 ocean views. You can check that on the website. One
14 of the things that puzzled me is that all of the stuff
15 we've used on my website is publicly available
16 information, and it does seem there are other things
17 that Mr. Macaulay might have looked at, but for
18 whatever reason, he did not.

19 But so I found sort of a couple of studies.
20 One was just up the road from you, Bellingham. And
21 there they're looking at views being valued, a range
22 depending on the magnitude, whether it's a poor view
23 or a great view, but something like 40 or 50 percent.
24 And I assume something similar might apply in Seattle.

25 The other study I looked at was in Cuyahoga

1 County in Ohio looking over Lake Erie, and, again,
2 that study was reporting premiums of sort of 80 --
3 90 percent, 50, 60 percent looking over the lake
4 compared to properties without a view. You add this
5 little bit of park improvements to that, just merely
6 it doesn't have an impact.

7 And so I can't tell you what my research
8 shows. It doesn't show because we haven't done it,
9 but prospect theory, which is the most robust theory
10 today in the economics literature, it's used and
11 displayed all over the place by literally thousands of
12 people and it's the most cited, dominant theory over
13 the last couple of decades, if you apply that
14 principle to your situation, it seems to me that to
15 say when you've got a 50 percent ocean view that this
16 is going to add much to that, I'm highly skeptical.
17 That's a view from the theoretical basis, and I have
18 no empirical data to support that.

19 Q And to just carry this further to some
20 specific numbers, if you assume hypothetically that it
21 is a park and it is exceptional, and it would
22 otherwise under your modern 2019/2020 Exhibit 3
23 plug-and-chug result in a 10 percent value increase to
24 adjacent properties within 500 feet, what would you
25 expect applying prospect theory? Would it be

1 10 percent? I mean -- yeah.

2 A My graph -- the graph is concave. That
3 indicates quite clearly. If you go 10 percent, you
4 get a whole unit. And, again, this graph is
5 empirically derived, not by my studies. I'm taking it
6 straight from Kahneman who has done a bunch of work in
7 this.

8 It is empirically derived, and he's showing
9 that, you know, typically the first unit of analysis
10 you get your full 10 percent value. By the time
11 you've got a premium in there of 40, 50 percent,
12 you're getting one-tenth of that. It just doesn't
13 register. It's a heuristic people use and receive
14 valuation. They just don't register it because it's
15 relatively insignificant.

16 Q And so the bottom line is if you would
17 otherwise expect for a -- on your 2019/'20 study for
18 an excellent park at 10 percent value lift, you would
19 expect in some measure reduction of that -- some
20 significant measure reduction of that valuation based
21 on prospect theory and the dominant water view.

22 A Yes. The reduced valuation is actually based
23 upon the heuristics people use to make decisions when
24 they purchase things they wouldn't take into account
25 at the same level. That's the point.

1 Q With that I would like to ask: Do you have
2 any concluding comments you would like to make before
3 we finish this drill?

4 DR. CROMPTON: The word "finish" sounds
5 terrific to me. I have no reason to want to extend
6 it. Thank you.

7 MR. LUTZ: All right. I hope I
8 introduced the exhibits. Maybe I should ask if
9 I've -- we had one that is pending Darby DuComb's
10 expert's declaration that we're working on. And we
11 had one that we did -- we chose not to admit, which
12 was Dr. Crompton's greenway value study. I believe
13 the rest have been admitted, but I'll just ask to make
14 sure?

15 HEARING EXAMINER VANCIL: Yes. We're
16 admitted up through 100 with what I believe was 101
17 that was omitted.

18 MR. LUTZ: Correct.

19 MS. LIN: This is Megan, Ms. Lin. I
20 just sent Exhibit 97, a new version of it, to
21 Mr. Edlund-Cho, so if -- maybe we have time for it now
22 or after cross-examination, but we do have an updated
23 exhibit that is accompanied by a declaration.

24 HEARING EXAMINER VANCIL: Okay. How
25 are you or Mr. Lutz intending to introduce that? I

1 mean, I know it's coming in with a declaration. This
2 is in some ways not your responsibility, frankly. It
3 was Ms. Terwilliger or DuComb. Can you help me
4 understand how we're proceeding here? Are you
5 producing something for them? What's being proposed?

6 MS. LIN: Well, because --

7 HEARING EXAMINER VANCIL: As far as
8 your witness is concerned, we used it for illustrative
9 purposes, and we're fine. It didn't need to be
10 introduced, and now I understand that you seem to be
11 working in some function for counsel for another case.

12 MS. LIN: I was under the -- I was
13 under the understanding that we were submitting it for
14 our case, because our expert relied on it and because,
15 although used it for demonstrative purposes, in
16 general, it's good to have the exhibits that we're
17 relying on as part of the physical record, but I'll
18 let Mr. Lutz if he has anything to add.

19 MR. LUTZ: Yes. And I guess the
20 only -- we would submit it as part of the record in
21 our case as a substitute Exhibit 97. I think given
22 the fact that apparently it has some minor
23 modifications that I don't know what they are and that
24 Dr. Crompton may not have reviewed, I would still
25 treat his testimony on that point as that being a

1 demonstrative exhibit. And we'll just introduce it
2 substantively with the declaration as -- for the
3 record in our case independently.

4 HEARING EXAMINER VANCIL: Okay. And
5 has Ms. Thompson had a chance to review -- have you
6 had a chance to review that, Ms. Thompson?

7 MR. LUTZ: Almost certainly not.

8 MS. THOMPSON: Yeah. I don't believe
9 so. Let me see.

10 No. I've only received some additional
11 exhibits that are not related to the -- Mr. Brown, I
12 believe, his work. So --

13 MS. LIN: There might be a delay.

14 HEARING EXAMINER VANCIL: Not to take
15 any more of Dr. Crompton's time to address this, let's
16 try to get to cross with him. And in the time
17 remaining, we can see if there's merit in trying to
18 get this introduced as an exhibit.

19 But if City counsel haven't had a chance to
20 review it yet and it's not relevant to this witness's
21 testimony, we'll just take that into consideration.
22 So just put that aside, and my understanding,
23 Mr. Lutz, objectors are finished with the witness; is
24 that correct?

25 MR. LUTZ: Yes. We have finished our

1 examination of Dr. Crompton.

2 HEARING EXAMINER VANCIL: Thank you. .

3 Cross?

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

5 BY MS. THOMPSON:

6 Q Thank you. Good afternoon, Dr. Crompton. My
7 name is Gabrielle Thompson, and I'm here on behalf of
8 the City of Seattle.

9 You spoke earlier today about being retained
10 by Perkins Coie to provide review and report in
11 relation to the ABS special benefit study.

12 When were you retained by Perkins Coie to
13 perform that?

14 A I don't have those dates in front of me,
15 ma'am. I would ask Mr. Lutz to recall when that was.
16 I don't have those dates in front of me. I cannot
17 respond.

18 Q Do you have an estimate?

19 A It was about two months ago, but that's all it
20 is. Mr. Lutz may have that correspondence in front of
21 him.

22 Q And earlier you also spoke about your
23 experience and educational background. What
24 experience --

25 A If I may, I'm a little bit deaf if you could

1 speak a little slower. I'm sorry. I've got my
2 hearing aids in, but fast speech and particularly
3 high-pitched female voices go right by me. It drives
4 my wife crazy. So if you could speak a little slower,
5 I would appreciate it. Thank you.

6 Q Of course. No problem. Just be sure to stop
7 me if you haven't had a chance to hear the question.

8 A Thank you, ma'am.

9 Q I can always repeat it.

10 So earlier we talked about your educational
11 background and your experience in teaching and
12 research. And I wanted to ask you what experience you
13 have in appraising real property?

14 A Zero.

15 Q And, similarly, do you have any experience in
16 calculating the special benefits associated with local
17 improvement districts?

18 A I have no experience of that, ma'am, but I'm
19 familiar with studies that have done that. I have no
20 personal experience in doing that.

21 Q And earlier you were asked by Mr. Lutz about
22 Mr. Macaulay's study and a reference in the study to a
23 2014 article or study by yourself. Do you recall that
24 question?

25 A I do recall the question, ma'am, yes.

1 Q And you had said that you did not issue a
2 study in 2014; is that right?

3 A That is correct.

4 Q It's possible that I might have written
5 something in a professional journal, and my answer was
6 responding to scientific publications. So, yeah, I
7 mean, for the record, I wrote one last week on this
8 topic, but it was in professional journals. And so it
9 had nothing to do with my -- it was sort of a
10 regurgitation of my scientific work.

11 I can't recall the particular article that
12 you're speaking to, but it's quite likely that I've
13 done those things. Part of my mission is to translate
14 my work to professional, so I do that ongoing -- in an
15 ongoing way, but the articles that are searchable, my
16 scientific articles, appear on my website.

17 MS. THOMPSON: Hello. Can everybody
18 hear me?

19 HEARING EXAMINER VANCIL: You and I
20 were competing to unmute you.

21 MS. THOMPSON: Apologies. My computer
22 must despise Zoom or something. Sorry for the delay.

23 BY MS. THOMPSON:

24 Q So before the interruption, Dr. Crompton, I
25 was asking you about whether you had authored a 2014

1 article or paper concerning the economic value of
2 parks systems and communities?

3 A And my response, ma'am, is it's quite
4 possible. When I responded to your question when I
5 did, I was referring to my science articles. Those
6 are the ones I put on my website and publish, but all
7 the time I'm writing articles for professional
8 journals and translating my work. Part of my mission
9 is to sell. I'm at a land-grant university, so that
10 happens all the time.

11 Q So it's possible --

12 A As I said in my earlier comments when you
13 might have been frozen out, I have a regular column in
14 the national professional magazine that goes out
15 called Parks and Recreation. It's a circulation of
16 40,000. I have a regular comment on financing in that
17 every month. And so, actually, this week's was on
18 that, on the topic we're talking about, but you
19 wouldn't find that in any of my publications, just
20 professional stuff.

21 Q So it's possible, then, that there is an
22 article from 2014 that you authored that Mr. Macaulay
23 could be relying on?

24 A Oh, yes, that's quite possible. Do you have
25 where it was published, just as a matter of curiosity?

1 Q Sure. I think I found it. It's -- now I
2 can't read my own handwriting.

3 A Don't worry about it.

4 Q Let me pull it up really fast. It's called
5 "Managing Leisure."

6 A Okay. "Managing Leisure."

7 Q It's -- the authorship is yourself and Peter
8 Harnik?

9 A Oh, yeah. Pete is -- you know I do a lot of
10 work with trusts and public land, and Peter is their
11 person. I think, though, that that article was not
12 specifically on this. But that article, in fact, I
13 think, as I recall, was a valuation of a park systems.
14 And this was one component of it. I think we looked
15 at about eight or ten different components and put
16 economic values on them, if I recall.

17 And I think what TPL do is they use a
18 5 percent premium on all residential properties. It's
19 a very crude measurement they use. If that's the
20 right article, I'm assuming it was that 5 percent
21 premium he was picking up on.

22 Q So earlier you also testified that you
23 released an update to your 2001 study in 2019 and
24 2020; is that right?

25 A Yes, ma'am.

1 Q What conclusions changed in the course of
2 updating that study?

3 A There were -- the first study I addressed
4 three questions. And in this study we addressed -- we
5 had eight issues that arose. So there was an
6 extension of the number of issues that had emerged
7 from our research programs. But the point you might
8 be referring to is that the magnitude of the premium
9 had declined in the more recent studies for the
10 reasons I expressed, primarily the omitted variable
11 issue.

12 Q And so could you give us the range of premiums
13 that a park would have based on your most recent
14 study?

15 A Yes, ma'am. We looked at -- as I recall, I
16 can look it up. It's Exhibit 589, I think. I think
17 we looked at 33 studies in there, and we -- as I
18 explained earlier, we categorized them in terms of was
19 the premium less than 5 percent? Was it between 5 and
20 10 percent, or was it 10 percent or more?

21 And we found equal number of studies
22 approximately of the 33 fell into each of those
23 categories. And so our recommendation was -- and I
24 quote here from the abstract -- that the results
25 suggested a premium of 8 to 10 percent on properties

1 adjacent to a passive park as a reasonable point of
2 departure.

3 Q And you testified earlier that those premiums
4 in your study are considered by you to be averages and
5 best guesses; is that correct?

6 A They're not best guesses. The premiums in the
7 scientific study are a reflection of what the
8 scientists who did those studies reported. But you're
9 correct in that my interpretation of the end range of
10 7 to 10 percent was sort of an average assumption
11 looking through those after I categorized them what
12 seemed to be a reasonable point of departure.

13 Q So people using your study to estimate the
14 impact of a park on property values can take that 8 to
15 10 percent premium and use it as a starting point for
16 analyzing the particular situation that they are faced
17 with; is that right?

18 A Absolutely. But as I prelude all of those
19 things by it's a best guess. It's a rough
20 approximation. It's a starting point. You know,
21 they're always context specific.

22 Q And you said earlier that you had had a chance
23 to review Mr. Macaulay's final benefits study; is that
24 right?

25 A Yes, ma'am, I did.

1 Q And did you see in the study the percentage of
2 increase in value that Mr. Macaulay had concluded for
3 the properties within the boundary?

4 A I did, ma'am. And I made no comments on those
5 because I have -- as you identified in your first
6 question, I have no appraisal experience at all. And
7 so my concern and my valuation and my discussions with
8 Lutz defined my brief here to say how was my work used
9 by Mr. Macaulay to arrive at his numbers, and so that
10 was the focus I concentrated on.

11 Q So do you understand from your review of his
12 report that the percentage increase in value that he's
13 estimated are below 4 percent?

14 A Oh, I mean, the average I had was 8 to
15 10 percent on properties immediately abutting the
16 areas of passive parks, but, you know, typically, as
17 I've pointed out, the decay gradient from the first
18 block to the third block is quite substantial, you
19 know, 20 percent, 10 percent, 5 percent. These are
20 very rapid drop-offs as you've gone through there, and
21 once you get beyond the 500-foot mark, it's really
22 tenuous.

23 Q But my question is: Are you aware that the
24 ABS final benefit study does not calculate an increase
25 in value over and above 4 percent for any property

1 within the LID?

2 A That's what Mr. Macaulay concluded, sure,
3 yeah.

4 Q And is it true that a 4 percent increase in
5 property value falls below the 8 to 10 percent premium
6 that is in your study?

7 A That is correct.

8 Q And I wanted to ask a bit about the scope of
9 your study. We talked earlier about the fact that
10 it's limited to residential properties; is that right?

11 A Yes, ma'am.

12 Q And I believe you said before that that was
13 because the data that you have available to you is
14 limited to residential properties; is that correct?

15 A That is correct.

16 Q So the fact that your study is limited to
17 residential properties doesn't mean that commercial
18 properties don't also benefit in an increase in value
19 because of a park; is that right?

20 A That's correct. In fact, I gave illustrations
21 of that with the Bryant Park in New York, and many
22 other cities have used that as an exemplar and built
23 upon it.

24 Q Speaking of the Bryant Park study, do you know
25 what types of commercial properties were studied in

1 that?

2 A Yes, ma'am. They were primarily office
3 spaces. You can actually -- I've given you some
4 references there in my appendix, and you can check
5 those references. And you can get an accurate
6 perception of that.

7 Q And do you know whether -- so Ernst & Young
8 was the firm that prepared that information; is that
9 right?

10 A Yes, ma'am.

11 Q Do you know whether Ernst & Young in its study
12 undertook to value properties that were not
13 immediately adjacent to the park?

14 A The way that Ernst & Young did it was they
15 didn't use what we would use in social sciences,
16 hedonic analysis. Their report actually was a
17 substantial 300-page document which examined a whole
18 array of properties that were impacted by parks, and
19 it looked at renovations of parks and so on and so
20 forth.

21 And this was one small section of it when they
22 picked up on Bryant. The standard modus operandi for
23 the residential areas that they looked at was to
24 compare the increases in property over the three
25 blocks adjacent to the parks with increase in property

1 on blocks four through six. And so that's how they
2 were doing it. They were doing it with comparables.

3 In commercial, they did it -- as I think the
4 appendix to my report here will show, they did it with
5 four other, I think, commercial areas that they
6 compared the increases of Bryant Park.

7 Q So, next, I want to talk about the proximity
8 principle in your study and the 500 feet out to the
9 2,000 feet distances that we heard testimony about
10 earlier.

11 A Yes.

12 Q I was looking at your -- this would be
13 Exhibit 96, which is the Appendix 3 to your
14 forthcoming book.

15 A Yes.

16 Q And you state on the first page there a
17 number, Number 1, and you're discussing how to measure
18 the benefits within 500 feet of the park improvement;
19 is that right?

20 A Yes, ma'am.

21 Q And you say here that a majority of the
22 premium from relatively large parks is likely to be
23 captured within the first 500 feet; is that right?

24 A Yes, ma'am.

25 Q And when you say that adopting this 500-foot

1 perimeter substantially simplifies the task of
2 estimating the increased value due to a park; is that
3 right?

4 A That's correct. I say in the case of large
5 parks, restricting it to a three-block buffer will
6 lead to an underestimate of proximate impact, because
7 while premiums beyond these distances are relatively
8 low, the number of properties within them is more
9 extended -- buffers is like (inaudible) to be high --
10 over adopting this 500-foot perimeter substantially
11 simplifies the estimation task.

12 Q So that means that, looking just at the first
13 500 feet closest to the park, will capture the
14 majority of the increase in value, but in the case of
15 a large park, that increase in value may extend
16 outwards to up to 2,000 feet; is that correct?

17 A That's correct, ma'am, yes.

18 Q And, next, I would like to turn back to
19 Exhibit 100, which is the -- the first page of that
20 exhibit says "LID Before and After Images."

21 A Yes, ma'am.

22 Q And earlier in your testimony, you had
23 identified within this packet images of what you
24 called the Waterfront Park, and I don't recall that we
25 were given any page number for that reference. So I

1 just want to make sure that I understood which of
2 these you consider the Waterfront Park.

3 A Well, I'm just quoting from the report here.
4 It calls it Waterfront Park looking north.

5 Q So that -- it looks like that's page 14 of
6 Exhibit 100 for the record.

7 And so your prior testimony was that in terms
8 of this view, the Waterfront Park looking north, you
9 would consider these improvements to qualify as a
10 park; is that right?

11 A Yes, ma'am. But let me qualify that and say
12 I'm going just on the representations that I have. I
13 have not seen the site, but that looks to me to be a
14 nice plaza or a nice gathering area or nice
15 neighborhood amenity. And if that's the correct
16 interpretation, then I would -- a bit of a stretch to
17 call it a park because there isn't much greenery
18 there, but I think it has some functions of a small
19 neighborhood park, yeah.

20 Q That raises one question that I had, because
21 you're a park expert and I'm not. In your mind, did
22 the park have to be sort of that traditional image of
23 a park when we think of, you know, the beautiful parks
24 in England with all the grass and the gardens and
25 things like that, or are there more modern parks that

1 involve less greenery and maybe more hard surfaces?

2 A Yeah. I think you're correct. There are a
3 variation. Park is an abstract concept. It has all
4 kinds of interpretations. You can put all kinds of
5 stuff in a park. You go to New York City and they've
6 got some sort of quarter-acre site with a waterfall
7 element and it's a park.

8 The point is that in my study, the 33 studies
9 we reviewed, were traditional parks, and so you can't
10 take those and apply them to what is a nontraditional
11 concept and a very different concept from what the
12 studies that I was looking at were based on.

13 Q Earlier in your testimony, you were discussing
14 Mr. Macaulay's measurements in his study, and you said
15 that he was measuring distance as the crow flies. Why
16 do you say that?

17 A My understanding of his study was he was
18 counting blocks from the park improvements, and that's
19 how crows fly. They go from A to B directly. And the
20 studies that we investigated over -- that we reviewed
21 over the last 20 years since we started our research
22 program and other teams also have done work in, they
23 use network analysis. They do not use as the crow
24 flies. They use that network analysis recognizing
25 people have to go down roads in order to get to the

1 parks, and so the distances we used were based upon
2 the networks and not the blocks.

3 Q I'm back. Apologies again.

4 So before I got cut off, I had asked you about
5 your statement that ABS was measuring the distances as
6 the crow flies, and I believe you began to respond by
7 saying that ABS, in your opinion, was measuring
8 blocks?

9 A Yes. I mean, as the crow flies is the direct
10 route from A to B. In the studies that have been done
11 over the last 20 years now, just about all of them use
12 network analysis, because the GIS mechanisms allow you
13 to do that now. They didn't allow you to do that
14 previously. And when you measure 500 feet in terms of
15 GIS mechanisms, you get a very different answer than
16 when you do it as the crow flies.

17 Q So it's your understanding that ABS and
18 Mr. Macaulay did not use a network analysis?

19 A Yes. That is my interpretation from his
20 study.

21 Q Would your opinions change if you learned that
22 he did, in fact, use network analysis?

23 A Well, I'd like to see the diagram that he
24 arrived at the LID at, because I didn't do that GIS.
25 It was commissioned, but I asked for it. And if he

1 did that, then, presumably, that's how he drew his
2 LID. And I would be interested to know how he arrived
3 at a different set of distances than the person who
4 did my GIS did.

5 Q Sure. And because you mentioned your GIS map,
6 which is Appendix 2 to Exhibit 94, which is your
7 report that you prepared --

8 A Yes, ma'am.

9 Q -- and here it looks like that the park
10 improvements that you've included in the GIS analysis
11 are the ones along the Waterfront; is that right?

12 A Yes, ma'am.

13 Q And so this wouldn't include the other
14 improvements that are a part of the LID?

15 A Those that we're talking about, the two
16 eastern prongs there, you're correct. It does not
17 include those. In my view, those are streetscapes and
18 not park improvements.

19 Q So this network analysis that you performed
20 assumes that the LID only includes the three
21 Waterfront improvements; is that correct?

22 A That wasn't what I directed the GIS to do
23 because the prongs, in my view, were not parks. They
24 were streetscapes.

25 Q And with respect to this Appendix No. 2,

1 earlier you testified that based on your research the
2 benefit of the improvements that are identified here
3 along the Waterfront would not extend beyond the green
4 lines that you've represented here on this Appendix 2;
5 is that right?

6 A Yes, ma'am. I believe that to be the case.

7 Q Do you know whether Mr. Macaulay relied on
8 research other than yours to draw his value
9 conclusions in this case?

10 A Oh, he did. He said that he relied on
11 streetscape research as well, and I'm not qualified to
12 comment on that. I only am qualified to comment on my
13 own work, which is parks.

14 Q And earlier you testified about disamenities
15 and the impact that they can have on property values;
16 is that right?

17 A I didn't catch your question, ma'am. I'm
18 sorry.

19 Q That's okay. You testified earlier about
20 disamenities and their impacts on values.

21 A Yes, ma'am.

22 Q And you had testified that disamenities like
23 lost parking and added tourists were things that
24 Mr. Macaulay didn't explain how he analyzed those; is
25 that right?

1 A Yeah. But that's speculation on my part,
2 ma'am. I mean, he did not explicitly indicate, at
3 least in my reading of it, how he built that into
4 his -- into his models, and my point simply was that
5 in parks they do have a disamenity. And, in fact, we
6 built those in.

7 Q And, next, I'd like to talk about the prospect
8 theory that you discussed at the very end of your
9 testimony --

10 A Yes, ma'am.

11 Q -- which I had never heard of before. It's
12 very educational.

13 Do you understand that part of Mr. Macaulay's
14 task was to assume that the viaduct had been removed
15 before determining values in this case?

16 A Yes, ma'am, I did. He explicitly stated that
17 views were not part of his brief.

18 Q So if -- if one is just isolating the value
19 added to properties as a result of the LID
20 improvements, would the prospect theory apply with
21 respect to impacts based on water views?

22 A Yes, ma'am. Because that premium -- whether
23 Mr. Macaulay includes it or not, that premium is
24 there. I don't know what it is. I can only
25 speculate. Based upon the other things I've seen and

1 the couple I cited and so on, I suspect it's
2 substantial.

3 My point is that when you add amenities to
4 something that is already a substantial premium, the
5 heuristic of human decision making makes it very much
6 smaller than if that amenity stands on its own.

7 Q And would the prospect theory apply
8 differently based on whether the particular property
9 has a water view or not?

10 A It would vary not so much on the water view.
11 It would vary on the magnitude of the premium, but we
12 know that premiums of water are highest of all.
13 They're higher than golf courses. Water amenity
14 premiums are much higher than others.

15 Q So assuming that there is a property that's
16 located, let's say, a block up from the Waterfront and
17 it's a smaller building that has been located behind a
18 larger building and there's a condominium that has no
19 water view, so it has no existing high premium value;
20 right?

21 A Right.

22 Q So then if you add a park, does that mean that
23 in applying the prospect theory that the premium of
24 any water view would be less impactful to that
25 property value; is that right?

1 A Absolutely, yes.

2 Q And do you know whether the prospect theory is
3 a concept that's used by licensed appraisers in
4 valuing properties?

5 A I have no knowledge of appraisal, ma'am. I
6 can't respond to that.

7 Q And in your studies, is it your conclusion
8 that it is possible to measure the increase in
9 property values that result from a park?

10 A Could you repeat the question, please.

11 Q Sure. Maybe I can restate it. Based on your
12 research and your studies, is it your opinion that the
13 addition of a park can have a measurable increase on
14 the value of a property?

15 A Absolutely.

16 MS. THOMPSON: Thank you. No further
17 questions.

18 A The complications to that is my (inaudible)
19 deal again, you know, but, basically, yes, it can.
20 That's -- the evidence is overwhelming in that
21 respect.

22 MS. THOMPSON: Thank you. No further
23 questions.

24 HEARING EXAMINER VANCIL: Redirect,
25 Mr. Lutz?

1 MR. LUTZ: No redirect. I would like
2 to let Dr. Macaulay get to his council meeting.

3 HEARING EXAMINER VANCIL: Okay.
4 Dr. Macaulay, thank you very much for your time. I
5 think we can all say this is interesting and
6 educational aspect. As a former land use practitioner
7 working with trusts for public lands and others, I
8 would love to hear more of you today, but we've got to
9 get on with things. And you've got to as well, and
10 express our sympathies to your wife as you have to be
11 a council member a second time.

12 DR. CROMPTON: Thank you very much for
13 the opportunity.

14 HEARING EXAMINER VANCIL: Mr. Lutz,
15 where do we stand now with regard to objectors' case?
16 We've got some exhibits to address, closing.

17 MR. LUTZ: And I'm going to leave it to
18 Megan -- to Ms. Lin to describe where we are in terms
19 of getting the declarations submitted and then how you
20 want to do that where I understand we're having them
21 marked starting, I suppose, at Exhibit 100 rather than
22 101 -- well, 101 wasn't offered -- was not offered.

23 HEARING EXAMINER VANCIL: It's been
24 marked. So I like -- again, I appreciate the effort
25 that you as objectors' representatives have gone to,

1 to number items. And so rather than change all the
2 numbers, we'll just leave a couple gaps.

3 And so, again, it was 101 that was left out.
4 And I am in receipt of 102 -- what's been marked as
5 102 through 114. If we could identify those just one
6 at a time and then we can get to that question about
7 97 later, and, Ms. Thompson, I'll be asking you if you
8 have any objections. And we'll go through the --
9 maybe if, Ms. Lin, you can simply identify the
10 number -- who the declaration is and date, and we can
11 get that on the record for marking purposes. And then
12 we'll move to admission.

13 MS. LIN: Sure. Exhibit 102 is the
14 deposition transcript of Robert J. Macaulay. It is
15 being submitted to the record of all of our cases, and
16 the deposition transcript is dated February 27, 2020.

17 HEARING EXAMINER VANCIL: And we'll
18 just go through all of them.

19 MS. LIN: Okay. Exhibit 103 is
20 objectors' closing brief. It is being submitted to
21 all of objectors' cases.

22 Exhibit 104 is the declaration of Ellen
23 Kirsten, along with supporting exhibits. It is being
24 submitted to all of objectors' cases.

25 Exhibit 105 is a declaration of Gerard Lutz,

1 along with supporting exhibits. It is being submitted
2 for all of objectors' cases.

3 Exhibit 106 is a declaration of Angelica
4 Palladino. It is being submitted for Case 0432, 0433,
5 and 0434, and it is dated April 15, 2020.

6 Exhibit 107 is being submitted for Case
7 Number -- all of objectors' cases, and it is dated --
8 it is the declaration of Cammy Anderson dated
9 April 15, 2020.

10 Exhibit 108 is the declaration of Clayton Rash
11 dated April 14, 2020, and is being submitted for Case
12 No. 0439.

13 Exhibit 109 is the declaration of Randy Meyer
14 dated April 15, 2020. It is being submitted for Case
15 No. 0415.

16 Exhibit 110 is the declaration of Reid
17 Shockey. It is dated April 15, 2020, and it is being
18 submitted for all of objectors' cases.

19 Exhibit 111 is the declaration of Richard
20 Suriama (phonetic). It is dated April 15, 2020, and
21 it is being submitted for all of objectors' cases.

22 Exhibit 112 is the declaration of Ross Beckley
23 dated April 16, 2020. It is being submitted for Case
24 No. 0420 and 0422.

25 Exhibit 113 is the declaration of Thomas Waith

1 dated April 15, 2020. It is being submitted for Case
2 No. 0318.

3 And Exhibit 114 is the declaration of Zikora
4 Medd (phonetic). It is dated April 15, 2020, and it
5 is being submitted for Case No. 0413, 0414, 0418,
6 0429, 0436, 0437, and 0438.

7 HEARING EXAMINER VANCIL: You cut out
8 briefly. That was Exhibit 114?

9 MS. LIN: Yes. Would you like me to
10 redo Exhibit 114?

11 HEARING EXAMINER VANCIL: No. That was
12 the only part that cut out. I was filling in for you.
13 You got the rest of it.

14 MS. LIN: Okay. And I also sent
15 Mr. Edlund-Cho an Exhibit 115 and 116. Do you have
16 those?

17 HEARING EXAMINER VANCIL: Yes. 115 and
18 116 have arrived.

19 MS. LIN: Okay. So Exhibit 115 is
20 being submitted on -- is a declaration of Peter
21 Shorett dated April 16, 2020. It is being submitted
22 on behalf of all of the cases for which Kidder Mathews
23 has appeared, and I can list those out for you. It's
24 318, 413, 414, 415, 417, 418, 429, 430, 431, 432, 433,
25 434, 435, 436, 437, 438, and 439.

1 And Exhibit 116 is our closing presentation
2 which Mr. Lutz will proceed to enter into the record
3 and rely on for his closing statement.

4 HEARING EXAMINER VANCIL: All right
5 then. Any objection to Exhibits 102 through 116;
6 correct? I think that was the last one we got to was
7 116.

8 MS. LIN: Correct.

9 MS. THOMPSON: The City generally has
10 no objection to the proposed exhibits but would like
11 to reserve the right to move to strike any of the
12 declarations, portions of the declarations or exhibits
13 that have been provided today. We haven't had a
14 chance to read through all of them. They're pretty
15 voluminous, but as long as we can reserve our right to
16 respond to them at a later date, then no objection at
17 this point.

18 HEARING EXAMINER VANCIL: And I'm
19 sorry. I don't recall our schedule. Did we set a
20 time schedule in the last order for City response? I
21 know we set a deadline date for the declarations.

22 MS. LIN: I have April 30 as the date
23 the City can submit responses to our declarations in
24 my notes.

25 HEARING EXAMINER VANCIL: That's what I

1 recall, and so let me make sure that's in my order or
2 not.

3 Yes. So that was in the last order that I
4 issued for schedule. April 30 deadline for City
5 response to any declarations submitted by objectors on
6 or before April 16.

7 Okay. The City has reserved that right for
8 objection and striking, making those objections at
9 that time. Aside from any objection which I reserve
10 the right to pull admission of anything if something
11 comes up during that, but otherwise for all purposes,
12 Exhibits 102 through 116 are admitted.

13 (Exhibit 102, Exhibit 103, Exhibit 104,
14 Exhibit 105, Exhibit 106, Exhibit 107, Exhibit 108,
15 Exhibit 109, Exhibit 110, Exhibit 111, Exhibit 112,
16 Exhibit 113, Exhibit 114, Exhibit 115, and Exhibit 116
17 were admitted.)

18 MS. LIN: May I ask two questions with
19 regard to the submission of exhibits?

20 HEARING EXAMINER VANCIL: Sure.

21 MS. LIN: It looks like our closing
22 brief is one of the exhibits, and that's fine with us.
23 I just want to confirm that it is not required for us
24 to submit all of our filings as exhibits in order to
25 make them part of our record.

1 For example, our Frye motion has not been made
2 an exhibit to the hearing, but I want to confirm that
3 those -- we had a prehearing motion. We also had a
4 motion to compel depositions. Those are all part of
5 our case record; is that correct?

6 HEARING EXAMINER VANCIL: Yes. That's
7 correct. And you're correct in noting that the
8 closing -- we wouldn't give it a number. Again, I
9 want to stick with your numbering system since you
10 proposed it. You submitted in that form. That's
11 fine. But pleadings are part of the record for any
12 portion of the hearing.

13 MS. LIN: And then my second question
14 is: In the normal course of presenting witness
15 testimony, we've been able to redirect. And I
16 understand with written declarations there is some
17 difference there. Is there any thought to whether or
18 not there's going to be an opportunity for, I guess,
19 written redirect in response to the City's April 30
20 response?

21 HEARING EXAMINER VANCIL: We didn't
22 identify that in the last prehearing conference, and
23 it seems a bit wonky. The City -- and, if I recall,
24 we had the same conversation with counsel about the
25 cross that is occurring with regard to City

1 declarations that will be coming in later in the
2 hearing, and I can't remember what we decided to do
3 about that.

4 MR. LUTZ: This is Jerry Lutz. I guess
5 the only real important reason to be able to have some
6 kind of reply would be to the extent that they're
7 moving to strike part of a declaration for whatever
8 reason. It would be nice to be able to respond to
9 say, no, it's a legitimate submittal.

10 HEARING EXAMINER VANCIL: Yeah. I'm
11 sorry. I just need to pause and make sure I take into
12 consideration the impacts for this beyond these
13 objectors and how it will impact out of fairness what
14 we do later in the hearing.

15 MR. LUTZ: Right.

16 HEARING EXAMINER VANCIL: Well, let me
17 ask the City. Are you anticipating an opportunity to
18 have a similar reply for responses to declarations
19 submitted by the City during its portion of the
20 hearing?

21 MS. THOMPSON: Well, I think to a
22 certain extent it makes sense to allow that type of
23 procedure, because if we each had presented witnesses
24 through live testimony, that would be a right
25 available to each side. So I guess our view would be

1 what's good for the goose is good for the gander, and
2 if that's something that the opposing parties feel is
3 necessary, then we would just ask that it be applied
4 equally.

5 HEARING EXAMINER VANCIL: Yeah. And
6 that's my concern as well is everyone does need that
7 applied equally with equal opportunity. My only
8 reservation around it is we're not really having
9 responses. It's not really cross, and it's not really
10 redirect. This is more briefing, and so we're getting
11 responses and replies.

12 But setting that aside as a small reservation,
13 I think that we have essentially adopted a process of
14 opening statement, response, and it's appropriate to
15 allow an opportunity for reply. We won't call it
16 redirect because it's not, but reply is in order.

17 In which case, let's set a date for that for
18 objectors now as that was not identified in the
19 earlier order on hearing schedule. The City's
20 response is due April 30, and, typically, we do
21 replies in a shorter period of time. So let's set a
22 reply date for May 7.

23 Thank you for your questions, Ms. Lin.

24 MS. THOMPSON: So just excuse me.

25 Sorry. Point of clarification, so the order that we

1 had issued, I believe it was April 8, set out the
2 scheduling for topic deadlines in this case, but then
3 you subsequently issued an order extending the City's
4 case out into May. So I'm wondering how that second
5 order affects the deadlines in the first order?

6 HEARING EXAMINER VANCIL: Yes. It
7 shouldn't affect any of them as they had separate
8 deadlines. And if any counsel see otherwise, bring it
9 to my attention. But in the -- let's go with April 8.
10 I don't remember the date either. I just have the
11 Word copy in front of me, not the final.

12 But in that we identified deadlines, half of
13 which have already passed and we've successfully met
14 with. And there's two remaining deadlines, one of
15 April 21, deadline for objectors to submit STAR
16 reports with supporting declarations demonstrating
17 impact of COVID-19 on the hotels. And then April 30
18 there was a deadline for the City response to any
19 declarations submitted by objectors on or before
20 April 16. We've added an additional date now on May 7
21 for reply.

22 The other order was directing -- was directed
23 at the City's case-in-chief, and if I recall, briefing
24 around -- related to cross-examination.

25 MS. THOMPSON: Okay. Great. Thank

1 you.

2 HEARING EXAMINER VANCIL: So there were
3 different -- different subjects were intended to be
4 addressed by the orders. So I don't think the order
5 that we were just discussing was disrupted in any way
6 by extension of the City's time line for their case.

7 MR. LUTZ: And this is Jerry Lutz, and
8 I have two more questions. One is on the schedule --
9 and I just want to make sure because I didn't hear
10 it -- that when Ms. Lin is going through and providing
11 the whatever we called them, tables, the table sets,
12 there's a deadline. And I thought it was May 7 as
13 well, but I'm just confirming.

14 HEARING EXAMINER VANCIL: Are you
15 talking about the STAR reports?

16 MR. LUTZ: Well, there's two things.
17 There's John Gordon is going to submit a declaration
18 about the STAR reports, but we were talking earlier
19 about the testimony that because of the treatment we
20 had given Mr. Macaulay's table sets as --

21 MS. LIN: Spreadsheets.

22 MR. LUTZ: Spreadsheets, excuse me,
23 that we weren't introducing them as exhibits. They're
24 now going to be introduced, and you had asked earlier
25 for -- well, first of all, we wanted time to make sure

1 all of our clients were willing to share what they
2 view as confidential material, which I expect almost
3 all of them will be, and then the second was Ms. Lin
4 was going to help provide a link for you to which
5 table sets went with which part of the hearings. And
6 she needed to wait for the transcript to come.

7 HEARING EXAMINER VANCIL: Right.

8 MR. LUTZ: And I just want to make sure
9 that that is also in here, however you want it in
10 here.

11 HEARING EXAMINER VANCIL: Yeah. And
12 I'm not issuing a new order, so that date stands. It
13 was --

14 MS. LIN: May 5.

15 HEARING EXAMINER VANCIL: I'm sorry?

16 MS. LIN: May 5.

17 HEARING EXAMINER VANCIL: That's what I
18 recall. And it was an explanatory note with those
19 data sheets of which there be a request that there be
20 an effort to coordinate the note, the explanatory
21 note, with the City so that hopefully everybody is in
22 agreement on what's being submitted.

23 MR. LUTZ: Okay.

24 HEARING EXAMINER VANCIL: But there's
25 no additional briefing, response, reply beyond that

1 May 5. I think we're done with that item. That's
2 just keeping the record open for one piece.

3 MR. LUTZ: Correct. I just wanted to
4 make sure we didn't let that drop.

5 And then the last piece that I would recommend
6 be subjected to the same process is while we decided
7 to use the demonstrative that we had proposed as
8 Exhibit 97 with Dr. Crompton's testimony, we now have
9 up John Brown's declaration and what apparently is a
10 modestly modified work product. I would like to
11 submit it as part of our case-in-chief so we can refer
12 to the declaration and the architectural mapping and
13 calculations that were done independent of
14 Dr. Crompton's testimony.

15 And if there are objections to that, moving to
16 strike or responses from the City, which I would not
17 anticipate, that they could be made at the same time
18 as the responding to the rest of the declarations.

19 HEARING EXAMINER VANCIL: Okay. First,
20 let me ask Ms. Thompson. Is there any standing
21 objection you have to 97 at this time, or do you want
22 to just throw it into the pool with your other
23 reserved opportunity for objecting?

24 MS. THOMPSON: Well, my -- I just note
25 that Mr. Lutz has referred to an actual expert report

1 by Mr. Brown, and the version of Exhibit 97 that we
2 saw earlier was two pages, perhaps a subset of that,
3 and Mr. Lutz also just referred to a declaration. So
4 I haven't seen those documents. So I would be willing
5 to just conditionally not oppose their admission at
6 this point and reserve the right to make any
7 objections at a later time.

8 HEARING EXAMINER VANCIL: Okay. So has
9 the City -- has this been sent to the City yet? I've
10 got it, I think.

11 MR. LUTZ: Yes, my understanding is it
12 has been, but that, again, would have been Ms. Lin's
13 laboring oar.

14 HEARING EXAMINER VANCIL: So,
15 Ms. Thompson, did you not receive that from them today
16 or --

17 MS. THOMPSON: Sorry. I'm reviewing my
18 e-mails right now.

19 HEARING EXAMINER VANCIL: Take a moment
20 to do that, and see if you've -- I at least want to
21 make sure you've got it. I appreciate your effort to
22 kind of moving it forward, but if we can treat it like
23 the others that we have, it's the same category as 102
24 through 116.

25 MS. LIN: I'll make a clarification for

1 the record. There were no substantive changes made to
2 the exhibits itself. It's now just attached to a
3 declaration.

4 HEARING EXAMINER VANCIL: Let's at
5 least let the City counsel get their eyes on it.

6 MS. LIN: Sure.

7 MS. THOMPSON: So I have a copy of it,
8 and everything looks to be in order. So no objection
9 to the admission of Exhibit 97.

10 HEARING EXAMINER VANCIL: Okay. So I
11 understand there's no objection -- no immediate
12 objection from the City with regard to 97, but they're
13 reserving the right within the briefing time that's
14 already been allocated to move to strike or raise
15 whatever objection would be appropriate. And under
16 those conditions, Exhibit 97 is admitted.

17 (Exhibit 97 was admitted.)

18 MR. LUTZ: Thank you.

19 HEARING EXAMINER VANCIL: Okay. Just a
20 moment. Let me make sure I've got this in my notes.

21 Okay. Thank you. We have all our exhibits in
22 order. Processed all the witnesses. What remains?

23 MR. LUTZ: We have a PowerPoint-enabled
24 closing argument that I would like to present.

25 HEARING EXAMINER VANCIL: Okay.

1 MR. LUTZ: And I'm not sure, with
2 apologies, how I actually open it up on Zoom and run
3 through it. Mr. Edlund-Cho has the PowerPoint, so I'm
4 wondering if it's possible to have him put it up since
5 I'm --

6 HEARING EXAMINER VANCIL: (Inaudible)
7 the limits of our capacity. That's a new one. But
8 I'm willing to entertain it. And let me ask a
9 question, though. How long do you need for presenting
10 this oral argument for closing?

11 MR. LUTZ: I would say no more than
12 20 minutes.

13 HEARING EXAMINER VANCIL: Okay.

14 MR. LUTZ: Fifteen.

15 HEARING EXAMINER VANCIL: Let's take an
16 afternoon break, and maybe if you and Mr. Edlund-Cho
17 could stay online together, you can give it a test off
18 the record. And then let's give it a shot when we
19 come back.

20 MR. LUTZ: Maybe Megan can stay on and
21 give me some more personal counseling as well.

22 HEARING EXAMINER VANCIL: Let's take a
23 break to 3:25 and that can be worked out.

24 (A break was taken from 3:06 p.m. to
25 3:25 p.m.)

1 HEARING EXAMINER VANCIL: We are
2 recording. Did everything get worked out to your
3 satisfaction, Mr. Lutz? Are you able to proceed?

4 MR. LUTZ: Yes, with one question that
5 we didn't contemplate, which is we're anticipating
6 Mr. Edlund-Cho will share the screen, and I will ask
7 him to advance the slides. And I just want to make
8 sure that he can still do that while you are the host,
9 but I'm sure it works.

10 HEARING EXAMINER VANCIL: Because of
11 this screen configuration and because we are so far
12 into the hearing, I am now making him the host so we
13 can remove that as an issue anyway.

14 MR. LUTZ: Thank you.

15 HEARING EXAMINER VANCIL: Helpful if I
16 have muting capacity when we're in a less controlled
17 environment than we are at this point.

18 Okay. Did everyone actually get a break too?

19 MR. LUTZ: We did, yes. Thank you.

20 HEARING EXAMINER VANCIL: Okay. Good.
21 All right. Then let's proceed with the closing for
22 objectors.

23 MR. LUTZ: And before I start this
24 presentation, I'd like to ask that you also have in
25 front of you our Exhibit 104, which is Dr. Ellen

1 Kirsten's GIS exhibit, but I'm not going to ask to try
2 to switch between exhibits. I just want to be able to
3 have you understand where some of the pictures are
4 coming from. It's in the just submitted package.

5 HEARING EXAMINER VANCIL: Are they the
6 same pictures that you've --

7 MR. LUTZ: They should be -- they are
8 the same pictures that has -- in her declaration, it
9 has the map of the road network that Dr. Crompton was
10 testifying to. It has a separate map that shows the
11 location of our variation objector parcels in
12 relationship to the 500 and 2,000-foot limits, and
13 it's just going to be part of this presentation. But
14 I wanted you to see where that was coming from.

15 HEARING EXAMINER VANCIL: Oh, okay.
16 All right. I don't have to have that open as well?

17 MR. LUTZ: No.

18 HEARING EXAMINER VANCIL: Okay.

19 MR. LUTZ: And so I'm ready to proceed.
20 Next slide, please.

21 Thank you for the time you've given us to
22 present this case, and there are a lot of issues that
23 we've raised which we think are all relevant to your
24 consideration and your findings and your
25 recommendations to the council, and, ultimately, we

1 remain of the opinion, which we argued this morning on
2 the Frye motion and the 702, that at the end of the
3 day the City's methodology is fundamentally flawed.
4 And the proposed assessments fail to accurately
5 reflect actual, nonspeculative, measurable, and
6 proportionate special benefits.

7 So we are asking that the proposed LID, under
8 your authority from the council, be rejected and
9 remanded for reassessment. And we would further
10 recommend that that reassessment occur after the
11 proper environmental and permitting work and after
12 stabilization of the COVID impacts.

13 Next slide, please. The LID process is set
14 out by statute and amplified by case law. And it is
15 the City's obligation to distribute and assess the
16 cost and expense of improvements in accordance with
17 special benefit inferred on each property within the
18 LID. That's the RCW.

19 The legal requirements include that the
20 special benefit must be pertinent to specific land not
21 in excess of actual special benefits enjoyed by that
22 particular parcel, exclusive of general benefits
23 enjoyed by the public at large, proportionate relative
24 to other parcels in the LID, and as we've talked about
25 repeatedly, it must be actual, physical, and material

1 rather than hypothetical and speculative. There's the
2 case cite, Heavens v. King County Rural Library
3 District, 66 Wn.2d 558, 1965.

4 Next slide, please. The standard of review
5 that the hearing examiner applies is whether the
6 proposed assessments which are otherwise presumed
7 correct have been overcome by clear, cogent, and
8 convincing evidence. That is not a low burden, but it
9 is less deferential than the standard that will apply
10 if we end up going to a judicial review.

11 And the reason is that because the heightened
12 standards in judicial review are not appropriate in
13 this context because you're actually reviewing the
14 report of a private consultant the City hired, and
15 that's the Hasit case.

16 Next slide, please. This is, to our
17 knowledge, an unprecedented use of the LID process to
18 fund citywide improvements. The Promenade, Overlook
19 Walk, Pioneer Square, Union Street, Pike/Pine
20 Streetscape, Pier 58, Waterfront Park extend
21 essentially from the convention center down to the
22 Market, over Alaskan Way, along Alaskan Way, back up
23 into Pioneer Square, and all the way down into the
24 stadium.

25 And to complicate this matter further, the

1 appraiser has what is really an extremely difficult
2 task, which is not only to assess whether there really
3 are special, actual measurable benefits from these
4 improvements to 6,000 parcels, but doing so to exclude
5 the value of the WashDOT proposal, including removal
6 of the viaduct.

7 Now, it is our contention and it remains our
8 contention that there is no way to understand from
9 Mr. Macaulay's report how he has, in fact, done that
10 exclusion and that, in fact, one way or the other, he
11 is charging value lift for removal of the viaduct.
12 But that's just one of the many ways in which this is
13 really an unprecedented use of this process to try and
14 hypothetically analyze what it ought to be without any
15 real data.

16 Next slide, please. So I wanted to talk about
17 the LID boundary and, in particular, why we were
18 focusing on Pier 58, Promenade, and Overlook Walk.
19 And that is here on page 180 of Mr. Macaulay's MAI
20 final study. He is creating boundaries around the
21 core park elements, and it may actually be -- well,
22 there it is right there. Pier 58, the Promenade, and
23 the Overlook Walk.

24 So for purposes of this modeling, we are using
25 Mr. Macaulay's construct. And you'll see when you

1 look at the map to the side, which is one of the GIS
2 exhibits to Dr. Kirsten's declaration, that we have --
3 she has shown on here the area of the Overlook Walk to
4 Pier 58 and then along the Promenade. She has also
5 included the Pike/Pine Street improvements and the
6 Union Street and Pioneer Square improvements, and she
7 has calculated the -- or she has depicted the shortest
8 road network route from the limits of the City's
9 proposed LID to those parklike improvements. There's
10 a scale of 1,000, 2,000.

11 So next slide, please. On this depiction,
12 which is also an exhibit to Dr. Kirsten's declaration,
13 she has depicted the various properties that are owned
14 by our clients. We've got 29 appeal petitions for 31
15 parcels. Properties comprise \$4.5 billion, at least
16 pre-COVID, worth of real estate downtown Seattle for
17 eight hotels, ten apartment complexes, four office and
18 retail buildings, three individual condos, and one
19 vacant lot.

20 None are pertinent to the park improvements.
21 Only one, which is 1212 -- is that 1212 Western Avenue
22 is within 500 feet of the park improvements. Ten are
23 further than 2,000 feet from the park improvements.
24 That's 13 of the parcels. And just as an aside and
25 interestingly, the Seattle Marriott is depicted, and

1 that's 2100 Alaskan Way. It, too, is significantly
2 beyond the 500-foot limit of anticipated benefit.

3 So next slide, please. The assessments are
4 speculative. They're not actual. The study assigns
5 special benefit, and there are a number of different
6 ways that they are inherently speculative. The first
7 is the fact that the LID improvements are not
8 scheduled to be completed until 2024, and there are a
9 number of intervening factors that could render these
10 valuations based on his hypotheses that he
11 incorporated into his analysis mistaken. So, first,
12 he assumed that the improvements would be permitted
13 and built according to designs and construction
14 schedules that he was provided by the City.

15 But as we've mentioned from the outset, the
16 permitting is, especially for Pier 58 and Pike/Pine
17 and Pioneer Square, is at a pretty nascent stage. The
18 City issued a DNS in the middle of February. So
19 nothing was issued when the proposed assessment was
20 sent out, but the City issued a DNS for Pier 58 on --
21 in the middle of February.

22 It has since asked the U.S. Army Corps of
23 Engineers to commence NEPA review of Pier 58 and a
24 non-LID component of the City's waterfront materials,
25 Pier 63. It has not undertaken environmental review

1 of either the Pike and Pine improvements or Pioneer
2 Square.

3 And the expert testimony on this is in a
4 declaration from -- it's actually two declarations.
5 The declaration of Reid Shockey, which includes as an
6 attachment the report that Mr. Shockey and
7 Ms. Anderson did and the declaration that Cammy
8 Anderson filed, which says, yes, those conclusions are
9 mine as well. So we have two authors, Reid Shockey
10 and Cammy Anderson, one report. And we'll talk about
11 this.

12 And their conclusion is that it is reasonably
13 probable that the City's construction schedule will
14 slip past the 2024 time that the City is -- that
15 Mr. Macaulay is using for his analysis, and, in fact,
16 also that conditions could be imposed as part of those
17 various reviews which include NEPA, Native Species
18 Act, Magnuson-Stevens Act, Coastal Zone Consistency,
19 State Shoreline Management Act, 401 Clean Water Act
20 certification of both 404 permits the corps needs to
21 issue and a Section 10, Rivers and Harbors Act
22 approval that the corps needs to issue and related
23 state and tribal consultation.

24 In fact, the first reaction to the City's
25 submittal was from the State Department of Fish and

1 Wildlife that said, well, we think it's a good thing
2 you're getting rid of creosote at Pier 63, but you're
3 going to have substantial footings at Pier 58. And so
4 we need to do more mitigation. But we'd like
5 better -- more developed drawings first, and let's
6 involve the tribes in a consultation on that issue.
7 That was literally the first reaction.

8 So the bottom line is it is speculative to
9 assume that these improvements will be built on time
10 and as currently proposed. And on top of that, we had
11 a construction expert from Highline who has talked
12 about the fact that given how the City has scheduled
13 this work, the overlapping schedules, and its history,
14 it is likely, from a construction perspective, that it
15 will be difficult for the City to achieve its
16 ambitious schedule for development of these
17 improvements.

18 And he also provided with Shockey Planning
19 Group with their notice to proceed deadlines that they
20 used to calculate how the permitting process could
21 interfere with that.

22 So the bottom line is there is a lot of work
23 that needs to happen that has been assumed to happen
24 seamlessly and on schedule before we even get to the
25 part by 2024, before you even get to the assumption

1 that it's all built as of 2019 for purposes of
2 analyzing these benefits.

3 Next slide, please. So on that point, until
4 those park improvements and street improvements and
5 the Promenade are completed, there is no benefit to
6 these properties. And you heard, for example, Mr. Lee
7 talk about at Harborsteps our average tenant is here
8 one to two years, one and a half on average. They are
9 not going to pay extra in order to rent an apartment
10 that will have benefits three and a half years after
11 they move out.

12 So the only thing that these properties have
13 experienced at this point is a significant value
14 decrease because of the financial load that these
15 special assessments are imposing on those parcels.

16 And, again, to go through some of the
17 different reasons why, even when they're built, the
18 people are not expecting special benefit is the hotels
19 don't expect an increase in rates or occupancy because
20 their primary clientele are business people for
21 conventions and business trips.

22 The apartments don't expect an increase in
23 rates or occupants because the renters don't pay three
24 or four years in advance and because they're renting
25 apartments based on other factors. They want to be

1 close to their work, and they want to have access to
2 the downtown. It's not that the park is not a nice
3 thing. It's just not a driver.

4 The office buildings don't expect any
5 increases in property value due to the increase in
6 tourism.

7 And the condos don't expect an increase in
8 property value because they already have protected
9 views, adequate access to the waterfront, and
10 amenities.

11 Next slide, please. Now, the before values
12 are inaccurate and overstated, and really part of the
13 beginning issue is it's hard to know how it -- how
14 Mr. Macaulay even did it if he did not show his work.
15 He has failed to calculate current values so that he
16 could then adjust those current values to show the
17 hypothetical WashDOT before value.

18 And it was an interesting debate on this
19 point, because I think Mr. Macaulay claims he did it.
20 Mr. Gibbons does not believe it. He thinks there is
21 no analysis, but the fact is one way or the other
22 there had to be because Mr. Macaulay said he was
23 adjusting for values to exclude, for example, removal
24 of the viaduct.

25 So he's got a before hypothetical. There's

1 no -- there's no contest on the City's part that the
2 before is a hypothetical. So that is a fundamental
3 error in the starting point. But then we go on to
4 point out and have pointed out in the context of a
5 number of these proceedings that there are also
6 fundamental things that Mr. Macaulay missed with
7 respect to individual parcels that we think are
8 prevalent enough that they call into question the
9 reliability of the entire report.

10 So, for example, the Fourth Avenue Associates
11 Century retail property, which is across from
12 Westlake, you heard the testimony that it's an old
13 building. It's probably going to be redeveloped very
14 soon because it's in the 90th year of a 99-year lease.
15 But because of the City's efforts to protect light and
16 air getting to Westlake Center and Plaza, they are
17 unable to go up more than two stories.

18 And when you review Mr. Macaulay's deposition,
19 he will -- he acknowledges that if there's a two-story
20 height restriction there, he has overvalued the real
21 estate. The same is true with respect to United Way.
22 They did not understand that the United Way building,
23 which, by the way, is owner occupied and they're not
24 trying to go anywhere, but on top of that, because
25 it's a historic structure, they got transferable

1 development rights, but they've sold all of those.

2 So it's hard to imagine how they get any lift
3 and it's also just fundamentally overassessed because
4 those facts were not considered when the before values
5 were being calculated.

6 For Helios, it has the wrong mix of
7 studio/multi units. And, you know, it's a question
8 how that would apply. It overstates the basic value
9 of the building, and it's also an interesting
10 question, which I don't know has been assessed whether
11 if you apply the right mix, studio users are less or
12 more likely to want to enjoy the park benefits of
13 Pier 58 or use the Promenade or the Overlook Walk or
14 anything else.

15 For the hotels, there was a fundamental error
16 at the start that his work is based on rack rates
17 rather than actual information, and there are a number
18 of instances where that for that reason alone the
19 before values have been dramatically overstated. I
20 mean dramatically like almost double what the same
21 analysis would predict if you use the actual room
22 rental rate and occupancy rate rather than the rack
23 rates that Mr. Macaulay relied on.

24 Next slide, please. And so, again, here's
25 another excerpt from his deposition. And so we're

1 talking about the fact that to do these modified
2 analyses of valuation based on the after of all this
3 additional tourism, if you see the question: So
4 you're shaving somewhere between 1/100th and 1/300th
5 of a percent off the cap yet?

6 Yes.

7 And in your mind that reflects that there's
8 something there but it's little?

9 And Mr. Macaulay's answer is: In a
10 prospective buyer's/seller's mind looking at market
11 value, two well-informed people in the market, they
12 would pay a slightly lower cap rate with the LID in
13 place than they would with it not in place in a before
14 situation.

15 So this isn't driven by any particular
16 academic study or --

17 No.

18 And what this really reflects is these are a
19 series of micro professional judgment calls of
20 infinitesimal changes in things like a cap rate or an
21 anticipated average room, food, and beverage charge.

22 They are much smaller than could ever be
23 teased out of any comparable sale data. It's just
24 it's in the -- this is in the noise. And so when
25 we're talking about the rule of thumb or, you know,

1 the 5 percent being the number, I mean, we're talking
2 orders of magnitude away from that here that he's
3 applying his professional judgment to tease out.

4 And, again, the second part of this is it does
5 fail USPAP, Standards 5 and 6, because there is no
6 model structure or data that allow calibration or
7 testing of his conclusions. It's not that they're
8 wrong. It's that there's -- that if the only -- if
9 the only there, there is his judgment, it's like me
10 saying I'm pretty confident that there's life on
11 Jupiter. You know, you can't say I'm right or I'm
12 wrong. Someday we'll get somebody out there. It
13 fails that professional standard.

14 Next slide, please. So we just had a long
15 presentation from Dr. Crompton, and he testified to
16 the many ways in which his research has been
17 misinterpreted and out of date. Information was
18 relied on in lieu of more accurate data, but we're
19 just starting here with kind of the two fundamental
20 runs.

21 Improvements are not a park, and the Seattle
22 city blocks are much bigger than his typical study.
23 So the 3 to 12 blocks, which is what Mr. Macaulay
24 interpreted him to mean -- and it was his reification
25 attempt at translating 502,000 feet was just

1 fundamentally off, which is why when we had those GIS
2 mappings, it's 500 to 2,000 feet. And the 2,000 feet
3 is really an outside limit measured by road networks
4 and not 3 of 12 blocks which extends that LID boundary
5 in some places, basically, a mile from the nearest of
6 the improvements that Mr. Macaulay thinks are actual
7 park improvements.

8 Next slide, please.

9 HEARING EXAMINER VANCIL: Let me ask a
10 question on that last item. I've heard it mentioned
11 that Seattle has larger blocks of 1.5. Is that in the
12 record somewhere? Probably not something I'll be able
13 to take judicial notice of because I've walked on
14 them. I kind of get the idea, but is there anybody
15 that -- Mr. Crompton couldn't testify to that. So I
16 don't -- I've heard people say it, but I don't know
17 that I've seen it -- somebody showed me the
18 dimensions. It could very well be there, but I don't
19 know.

20 MR. LUTZ: As a starting point, back to
21 Dr. Kirsten's GIS modeling, there is a scale that
22 shows 1 to 2,000 feet.

23 HEARING EXAMINER VANCIL: I just want
24 to be clear what's being referenced that it's there
25 somewhere.

1 MR. LUTZ: Yeah. It's there.

2 HEARING EXAMINER VANCIL: Okay. Thank
3 you.

4 MR. LUTZ: And by the way, with
5 apologies, I am not sure, given how truncated our
6 presentation has been with different presenters,
7 whether we've specifically introduced it through any
8 live witness. I know it was after.

9 HEARING EXAMINER VANCIL: That's my
10 main concern. Yeah, I'm not going to hold your feet
11 to the fire on every objector.

12 MR. LUTZ: Thank you.

13 HEARING EXAMINER VANCIL: Putting this
14 in there.

15 MR. LUTZ: Thank you. Next slide,
16 please.

17 The experts that we called have testified that
18 case studies that Mr. Macaulay cited are not an
19 adequate substitute for matched pairs analysis in
20 trying to tease out what these types of benefits would
21 be.

22 And, for example, Mr. Gibbons talked about,
23 well, it wouldn't be that hard, because you could look
24 at properties adjacent to Green Lake which have both a
25 park and water and then -- or Kirkland, the Kirkland

1 waterfront, park and water, and then compare that with
2 someplace that just has a park. But I just don't
3 think -- there's no information that we have that
4 Mr. Macaulay presented that he undertook any type of
5 analysis like that. And it is my understanding in his
6 deposition -- and I don't recall anything to
7 contradict this -- that he simply said he did not do
8 any of that work.

9 Now, he does have the HRA study, which we're
10 mentioning here, and it's talking about what are
11 incomparable data from New York City to project
12 increases in tourism. But that report itself didn't
13 try and draw any conclusion between an increase in
14 tourism and an increase in property value of any of
15 the types of properties that we're representing or any
16 of the properties -- in specific, any of the
17 properties that our own owners testified would not
18 benefit from these types of improvements in any
19 special way.

20 Next slide, please. So, again, another major
21 point of missing analysis is the failure of the report
22 to calculate special and general benefits and exclude
23 the general benefits. Mr. Macaulay, by the way, in
24 his -- in his deposition said what he did was he just
25 said the special benefit extends to here, being the

1 LID boundary, which was partially driven by
2 neighborhoods, but that anything general was just
3 beyond that. And he did not agree that he needed to
4 account for and exclude general benefits even though
5 he wrote the LID manual chapter that says that.

6 The second thing is that while Mr. Macaulay
7 reported that he was considering the loss of parking
8 and the potential overwhelming tourism load as a
9 potential disamenity to adjacent parcels, he says he
10 considered it, but, again, there's absolutely no
11 information in his report that shows how that was
12 accounted for in arriving at what he ultimately
13 determined were special benefits of the .025 percent
14 to 4 percent.

15 And then at the same time, we think that the
16 final study improperly attributed special benefit from
17 the fact that the new Waterfront amenities will be
18 designated as parkland conveying broader powers to the
19 City regarding upkeep, maintenance, security in the
20 vicinity. What we understand that to be -- and it
21 will be interesting to hear Mr. Macaulay talk about
22 this -- is that he has, again, hypothesized that
23 because this is going to be characterized under City
24 internal management as a park asset that it will give
25 the City broader authority to control things like a

1 homeless encampment.

2 And that becomes part of the Macaulay analysis
3 that is -- it is going to be an excellent park and to
4 either discount or ignore or at least certainly not
5 talk about environmental disamenities. Next study --
6 or next slide, please. Mr. Cho. There we go.

7 So, again, I mentioned this earlier, but it is
8 absolutely unclear how Mr. Macaulay translated from
9 his hypothetical before to his hypothetical after
10 valuation, and we talked about in some of the
11 testimony. Again, Anthony Gibbons, you've got
12 two-and-a-half-foot -- two-and-a-half-inch diameter
13 trees in the WashDOT model substituted with 4-inch
14 trees for the Promenade in the LID model.

15 And there were others where there would be,
16 like, one curb cut bulb to try and control traffic.
17 And there was no analysis to show how he was actually
18 making the calculation between the before and the
19 after. There's no data driving that at all. What we
20 believe it to be -- and I mentioned this earlier --
21 are a series of micro judgments by the appraiser that
22 are not informed by any data at all.

23 So going further, these cases are talking
24 about how you have to actually have a real special
25 benefit. And so the example is if I have a fire

1 hydrant that I otherwise have to pay for fire as
2 opposed to I've already got a fire hydrant and I don't
3 need another one, and that was one of the cases.

4 So you've got these cases here in Schmitz no
5 special benefit from raising a road grade by 16 feet
6 where 9 would have worked equally. I'm not sure why a
7 two-and-a-half-inch-diameter tree doesn't work as well
8 as a 4-inch tree.

9 There is, again, no -- no special benefit
10 where you're already connected to sewer service.
11 These people are proximate to the waterfront. They
12 have both views and a waterfront amenity. The LID is
13 going to beautify the waterfront amenity, make it more
14 pedestrian friendly, add Pier 58, but there really is
15 no demonstration of why these additional improvements
16 are going to provide any special benefit to these
17 6,000 parcels and, in particular, our clients'
18 31 parcels.

19 So our clients already have access to
20 restaurants, businesses, the waterfront. Many have
21 protected views. And then here's the fire hydrant
22 case again, CF Appeals v. Jones. Thanks. Next page,
23 please.

24 So that is a suite of reasons, and there are
25 actually more teased out in the different

1 presentations and testimony about why these
2 assessments are arbitrary and based on flawed methods.
3 We haven't even really mentioned in here the whole
4 issue of how the COVID virus issue has now caused a
5 recession and created a value impact that because --
6 just because of the date of Mr. Macaulay's work is not
7 anticipated by his work but will be in full force when
8 these assessments are finalized.

9 And so on that basis, his report, without
10 criticizing any other element of it, is just stale.
11 But for all these reasons, we jointly and respectfully
12 request that the examiner find the final study flawed
13 and recommend that the council annul objectors'
14 assessments or request that the final study be redone
15 before the assessment is finalized following
16 completion of discretionary permitting processes for
17 the LID improvements and following any stabilization
18 of the COVID disruption. Thank you.

19 HEARING EXAMINER VANCIL: Thank you,
20 Mr. Lutz.

21 Mr. Edlund-Cho, would you please remove the
22 share screen.

23 MR. EDLUND-CHO: Yes.

24 HEARING EXAMINER VANCIL: Anything
25 further from objectors?

1 MR. LUTZ: I will ask Ms. Lin to make
2 sure I haven't missed anything, and I have nothing
3 further.

4 MS. LIN: I have nothing further.

5 HEARING EXAMINER VANCIL: We've -- in
6 the course of a number of days, I don't remember how
7 many we've had just for this collection of objectors,
8 we've been through a forum that was in person to a
9 hybrid to now fully remote. Are there any concerns or
10 objections that either party needs to note or get on
11 the record at this time?

12 MR. LUTZ: I have one comment on that,
13 Mr. Examiner, and we have some extra time. We had
14 asked early on for some additional depositions that
15 you denied our request for additional depositions. I
16 think the -- there's a compounding issue here because
17 we have not had the opportunity to refine any
18 objections we have to potential City witnesses,
19 testimony, and now with the way the schedule is set
20 up, there are two days for the cross-examination of
21 all of the objectors.

22 And my question is -- I mean, I will say that
23 not having had the opportunity to do those depositions
24 will make the cross within the limited amount of time
25 more challenging, and so I just raise the prospect of

1 potentially making that less challenging if we could
2 get a list of the City's witnesses and do some
3 depositions to help expedite that and make more
4 efficient those two days of cross.

5 HEARING EXAMINER VANCIL: Okay. My
6 question was more with regard to the process and
7 procedures in the hearing examiner's office that we've
8 had to encounter due to COVID-19 with remote access
9 and remote witnessing, etc.

10 MR. LUTZ: We have no objection to the
11 process that has occurred as a result of the transfer
12 and transition to the remote testimony and appreciate
13 the opportunity to manage it as best we have.

14 HEARING EXAMINER VANCIL: City?

15 MS. THOMPSON: No objections from the
16 City.

17 HEARING EXAMINER VANCIL: All right. I
18 want to then go to the new item raised by Mr. Lutz.
19 At this time I don't see that the change in schedule
20 or anything has changed. I'm not sure that we got a
21 lot of efficiency from Mr. Macaulay being deposed, but
22 that weight is to be seen. I do reserve the right to
23 extend the amount of time we have set aside for cross.
24 But even with the number of objectors -- right now we
25 have, without making any effort by the examiner to

1 call or go through the individuals who said they want
2 to cross, it's 52.

3 Now, that's a higher number than have actually
4 presented their cases. And I'm not going to allow
5 individuals who haven't even met the standard of
6 review for presenting their own case to try and do so
7 through cross by Mr. Macaulay. It doesn't work that
8 way.

9 So my anticipation is that we will have a
10 reasonably manageable group. We'll be back -- I'm not
11 going to do that until we're in person. So it should
12 be more manageable, and that's two whole days
13 dedicated to one witness with -- I haven't seen a
14 witness take two days on cross in my time in land use,
15 and that's including in the MHA hearing we had with
16 29 neighborhood groups and multiple individuals and
17 expert witnesses two years ago.

18 So this witness is -- although not to degrade
19 the enormity and the importance it is for your
20 clients, it's actually a very narrow subject matter
21 that he's being crossed on. It's a single report, and
22 there's multiple issues within that that are raised.
23 But the objectors are all essentially copying and
24 pasting each other's arguments. And so it's not a
25 wide range of issues that need to be addressed. I

1 believe the two days will probably be taken up, but I
2 reserve the right to identify more time if that's
3 necessary.

4 And while the City is being shoved out to a
5 later date, I don't want to try and occupy that time,
6 particularly under the circumstances with COVID-19.
7 I've been very sensitive to trying to create more work
8 for everyone to have to do during these times. It
9 impacts families. It impacts businesses. And I don't
10 think adding another layer of trying to get
11 depositions scheduled within the next couple of weeks
12 is going to be efficient or helpful to anyone under
13 the circumstances. And so I'll just keep my existing
14 orders on that in place, but thank you for your
15 request.

16 With that I do want to thank objectors and the
17 City for what I view as extraordinary efforts to
18 accommodate and work through a process that is
19 extraordinary within our lifetimes. It's a pandemic,
20 and we took it in hand. And we are now coming to the
21 end of days' worth of testimony that I have heard and
22 I've understood and I understand what the objectors
23 are saying. I think it's been professionally
24 presented and professionally managed. It speaks very
25 well to the firms of Perkins Coie and K&L Gates and

1 the city attorneys to be able to carry us through
2 this, and I appreciate your cooperation in doing so.

3 With that we'll conclude for the day, and I
4 look forward to seeing you all when we're back live in
5 May or maybe June. We'll see.

6 MR. LUTZ: Thank you.

7 HEARING EXAMINER VANCIL: Thank you,
8 all.

9 MS. THOMPSON: Thank you.

10 MS. LIN: Thank you.

11 (The proceedings concluded at
12 4:11 p.m.)

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STATE OF WASHINGTON
COUNTY OF KING

I, Nancy M. Kottenstette, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings on April 16, 2020, is true and accurate to the best of my knowledge, skill, and ability.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of May, 2020.

Nancy M. Kottenstette
Nancy M. Kottenstette, RPR, CC 22

