

Seattle Waterfront LID Assessment Hearing

Seattle LID Hearing

June 26, 2020



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SEATTLE WATERFRONT LID ASSESSMENT HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken in Seattle, Washington

(ALL PARTICIPANTS APPEARING VIA VIDEOCONFERENCE)

8:30 a.m.

DATE TAKEN: June 26, 2020

REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

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Report by the Hearing Examiner

1 HEARING EXAMINER VANCIL: I call to
2 order this June 26, 2020, continuance of the Seattle
3 Waterfront LID Assessment Hearing. Today's plan is
4 the final day for cross-examination by objectors for
5 City witnesses.

6 Again, only the City and objectors planning to
7 cross-examine City's witnesses will participate
8 directly in the hearing. Other objectors in the
9 public will listen via listening line, the connection
10 for which is provided on the web page for the Seattle
11 Office of Hearing Examiner. Callers will -- callers
12 will be able to listen to the hearing but not
13 participate directly.

14 The schedule for today will continue depending
15 on the time we allocate and how long the
16 cross-examination continues. But we will take a break
17 approximately at 10:00 a.m., lunch at noon until 1:15,
18 and then another 15-minute break approximately at
19 3:00 p.m. depending on where we are with witnesses.

20 Just a reminder for some of the protocols for
21 participating in the hearing, make sure that all the
22 noise in the background that is minimized as much as
23 possible. Turn off your cell phones, and when you're
24 not participating directly in presenting testimony or
25 cross-examining, please turn off your microphone, turn

1 off your video.

2 At any time you have some technical or general
3 procedural questions, please use the chat to direct
4 those to my legal assistant. Do not use the chat for
5 any other purpose.

6 Before we get started today, I'll check to see
7 if there are any procedural questions from any
8 objector or the City? Are there any procedural
9 questions or issues that we need to address before we
10 get started again today?

11 Are there any -- I did not ask at the end of
12 the hearing, and I tend to do this for our remote
13 hearings at the end of each day of hearing. I did not
14 get a chance to ask at the end of the hearing
15 yesterday. Were there any issues with technology or
16 the remote hearing process via Zoom? Any objector or
17 the City would like to note for the record and for the
18 Hearing Examiner today that need to be brought to my
19 attention?

20 Hearing none, we'll proceed with
21 cross-examination. We'll start with Foster Marshall
22 from the objectors' list. Jacob Stillwell will be
23 cross-examining Mr. Marshall.

24 Mr. Marshall, you remain under oath or
25 affirmation from your earlier participation in the

1 hearing.

2 Mr. Stillwell, your witness.

3 MR. STILLWELL: Thank you. And I'm
4 sorry. Maybe I should have said this earlier. I sent
5 around the Perkins Coie objectors' exhibit list and
6 exhibits last night. Did anyone not receive those, or
7 did those still need to be circulated? Mr. Filipini,
8 do you have a copy of all of those?

9 MR. FILIPINI: Yes, I believe we do.

10 MR. STILLWELL: Great.

11 HEARING EXAMINER VANCIL: And just
12 let's pause for a second, Mr. Stillwell. Is there any
13 objector that did not receive the exhibits that
14 Mr. Stillwell distributed?

15 MR. MOSES: This is Mr. Moses. I did
16 not receive them.

17 MR. PATTON: And Will Patton. I did
18 not receive it.

19 MS. MORENO: And Mary Moreno. I did
20 not receive it.

21 MR. BURRUS: Gene Burrus did not
22 receive it.

23 MR. TANASE: Ted Tanase did not receive
24 it.

25 HEARING EXAMINER VANCIL: All right.

1 It sounds like there may be a large group that did
2 not, at least half a dozen or so. Are you able to
3 just send it to everybody?

4 MR. EDLUND-CHO: Uh-huh.

5 HEARING EXAMINER VANCIL: My legal
6 assistant will now send out the exhibits to everyone.
7 Even if some of you are repeats, we don't have time to
8 get this precise, but we do want to make sure that
9 everybody has the exhibits. Mr. Edlund-Cho will
10 e-mail those out to everyone. We will take a short
11 recess to allow the exhibits to be distributed and for
12 you all to open and access them.

13 We will reconvene at 8:45.

14 (A break was taken from 8:34 a.m. to
15 8:45 a.m.)

16 HEARING EXAMINER VANCIL: We're
17 returning to the record now, and, yes, we can hear
18 you.

19 MS. GIELEN: Thank you.

20 HEARING EXAMINER VANCIL:
21 Mr. Stillwell, Mr. Foster, please turn on your
22 microphones. All right. We're ready to proceed.
23 Mr. Stillwell.

24 Let me check. Did anyone not receive the
25 e-mail? Has everyone now received the e-mail from my

1 legal assistant for exhibits?

2 All right. Mr. Stillwell, please proceed.

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

4 BY MR. STILLWELL:

5 Q Thank you. Jake Stillwell from Perkins Coie
6 for the record on behalf of objectors in Case
7 Numbers 0318 through 0441.

8 Good morning, Mr. Foster.

9 A Good morning.

10 Q So is the Seattle Department of Transportation
11 the current city department in charge of serving the
12 existing waterfront area?

13 A The majority of it. The rights-of-way on the
14 waterfront.

15 Q Okay. And what are SDOT's existing
16 responsibilities for sort of operating and maintaining
17 that right-of-way?

18 A You mean like kind of day-to-day maintenance
19 activities?

20 Q Correct.

21 A Yeah. They would be responsible for the
22 general cleanliness of streets and sidewalks,
23 maintaining trees and any landscaping that is there on
24 City right-of-way.

25 Q Do they do any sort of activation activities

1 on the sidewalks?

2 A Does SDOT? No, not that I'm aware of.

3 Q Okay. Do you know does any other city
4 department currently do activation-type activities
5 along the waterfront?

6 A The -- on the -- in the parks properties
7 historically, not -- not recently, but in the past,
8 the Parks Department has had some concessionaires, you
9 know, people who would come out who could sell things
10 under concession agreements in Waterfront Park, but
11 that's -- that's really the majority. I mean, there
12 were -- there were more things that happened in the
13 past, for example, on Pier 62/63, but that was many
14 years ago.

15 Q Got you. And at what point is the Seattle
16 Parks Department expected to take over operation and
17 maintenance of the Waterfront area in partnership with
18 Friends of the Waterfront, for example?

19 A So you mean for the overall Waterfront area?

20 Q Correct, yeah.

21 A Okay. Yeah. The approach we've had is to
22 essentially form an agreement between them essentially
23 about a year to a year and a half prior to the opening
24 of the park features to have all the final pieces.
25 I'm guessing we'll talk about it, but, you know,

1 there's -- there's kind of a whole process that's laid
2 out in the operations and management ordinance for how
3 to establish parks jurisdiction and then to establish
4 the maintenance agreement for the spaces.

5 Q Got you. Okay. Thank you.

6 And could you describe the difference in terms
7 of municipal services for when SDOT has responsibility
8 over the area as compared to what it will look like
9 when the Parks Department takes over operation and
10 maintenance?

11 A Sure. So SDOT's maintenance responsibility
12 and approach is really focused on the transportation
13 functions of Alaskan Way and the sidewalks. And what
14 that, you know, essentially entails is keeping the
15 corridor free and clear for the movement of people and
16 goods. That's their maintenance priority and focus.

17 The Parks Department has kind of a much
18 broader maintenance program. You know, obviously, in
19 their maintenance of parks, they take a much more
20 holistic approach with a lot more intensive staffing
21 typically in neighborhood parks for maintaining
22 landscapes, maintaining playgrounds and park features.
23 And in this case, there will be, you know, an
24 additional or enhanced level of commitment from the
25 Parks Department through a dedicated team of

1 maintenance staff who will be focused on the
2 Waterfront with a dedicated budget.

3 We've talked about that last week. And then
4 also in addition to their focus on maintenance is the
5 Friends of Waterfront Seattle will do active daily
6 programming, which means bringing a whole range of
7 different activities into the park spaces, everything
8 from, you know, small-scale recreation exercise
9 classes that might happen on a weekday morning to kind
10 of larger scale public events like a farmers market or
11 a festival that could happen on a weekend.

12 Q Got you. Thank you.

13 I'm now going to bring up Ordinance 125761,
14 which has been marked earlier as Exhibit C-3. And for
15 ease of reference, I'm going to share my screen. Are
16 you able to see the -- it's the legislative summary
17 that's up right now?

18 A I'm not able to see your screen.

19 HEARING EXAMINER VANCIL: You're not
20 sharing screen yet, Mr. Stillwell.

21 MR. STILLWELL: Oh, okay. I'm sorry.
22 How about now?

23 MR. FOSTER: Yes.

24 BY MR. STILLWELL:

25 Q Let's see. So this is the ordinance that

1 outlines the City's operating agreement with Friends
2 of the Waterfront; is that right?

3 A Yes. It's not a detailed operating agreement,
4 but it outlines how we will go about entering into
5 that agreement and what the general terms of it should
6 be.

7 Q And as part of those general terms under the
8 ordinance, is the City committing to budgeting
9 4.8 million annually in baseline funding -- I believe
10 it's beginning in 2023 -- to help with those
11 Waterfront operations?

12 A The City in this ordinance is essentially
13 committing to bring forward in its annual budget those
14 funds. The city council has, essentially, the
15 authority to confirm a budget annually. So that's
16 a -- that's a -- that final action has to be
17 independent. The ordinance doesn't -- doesn't
18 obligate the council ultimately to that final action
19 but that we would bring forward the budget including
20 those funds annually.

21 Q Thank you. That sort of gets at what my next
22 question is, was turning to -- this is page 16 of the
23 exhibit. And if you wouldn't mind just reading here
24 the highlighted lines 3 through 8.

25 A I'm sorry. Would you like me to read those?

1 Q Yeah. Or -- yes. If you wouldn't mind
2 reading them, I think it will just help with the
3 discussion.

4 A Sure. The management agreement shall provide
5 that in any year in which the City fails to
6 appropriate budgeted baseline funding as required
7 under this ordinance, except for temporary reductions
8 as provided herein, the operating partner may
9 terminate such agreement or suspend its performance
10 under such agreement until full baseline funding is
11 restored. Similarly, any -- in any year in which the
12 operating partner cannot perform its duties or provide
13 the financial support contemplated in this agreement,
14 the City may terminate or suspend the management
15 agreement.

16 Q So thank you. So is it accurate to say that
17 this is essentially saying that if the City fails to
18 appropriate that baseline funding, that 4.8 million,
19 that the City at least commits to budget for, if it
20 doesn't actually appropriate that, then Friends or
21 whoever ends up being the operating partner is
22 relieved of its obligations to do sort of the
23 operating activation-type programming?

24 A It's -- yes. They would have the -- the
25 option to terminate or suspend the agreement, which is

1 where those commitments lie, if we do not have the
2 baseline funding.

3 Q Okay. Thank you. And I'll -- I'll stop
4 sharing my screen now, but just if you need to -- or
5 like to reference that again, just please let me know
6 because I do have some follow-up questions about the
7 ordinance.

8 To your understanding, if either the City ops
9 not to provide baseline funding in any given year, you
10 know, or Friends fails to raise its -- its funding,
11 what would happen in terms of the municipal services
12 at the Waterfront? Would it sort of revert back to
13 being SDOT responsibility where it's more of a
14 transportation-focused entity?

15 A So -- so the interesting thing here -- I mean,
16 the funds that we're talking about are established as
17 part of the Metropolitan Park District in terms of
18 that baseline maintenance funding. And as I'm sure
19 you read elsewhere in the agreement, we establish a
20 park boulevard to establish park's jurisdiction.

21 In that hypothetical, it would continue to be
22 the Parks Department's responsibility to maintain that
23 space. If we were in year five or year ten or
24 whenever and that happened, the park boulevard would
25 still be in place. It would still be Parks Department

1 jurisdiction.

2 Q Okay. Does the -- I know we talked about how
3 the ordinance requires the City to provide -- sort of
4 bring forward in its budget the 4.8 million. But does
5 it require a city council to fully appropriate that
6 baseline funding?

7 A It anticipates and it's built essentially with
8 the understanding that that would happen, but, no, the
9 ordinance cannot require the city council to make an
10 appropriation. It cannot bind a future city council.

11 Q Okay. Thank you. And do you know if -- if
12 Friends of the Waterfront or any of the property
13 owners within the LID, are they authorized under the
14 ordinance to bring legal action against the City to
15 enforce that appropriation?

16 A I guess I'm not sure. Are you speaking
17 specifically about this ordinance?

18 Q Yeah. Or the -- the ordinance or I suppose
19 we're talking about an operating agreement that
20 doesn't exist yet. I guess my question is: Given
21 that the property owners or Friends of the Waterfront
22 have sort of a stake in these activation activities
23 happening that may not then happen if the City doesn't
24 appropriate the money, is it your understanding that
25 under this ordinance could property owners within the

1 LID bring legal action against the city council to
2 force that appropriation to ensure that the LID
3 projects are sort of fully funded and operated?

4 A Not under the terms of this ordinance. If you
5 mean the actual forcing them to appropriate, there is
6 a separate agreement that I'm sure you're aware of,
7 the protest waiver agreement, which speaks in
8 contract -- in contractual terms about those
9 commitments, but this ordinance does not.

10 Q And is -- is -- the project completion
11 anticipates was the number 175 and a half million for
12 the completed LID improvements?

13 A So if you're describing the LID, the amount of
14 funds assessed, yes, that sounds -- that sounds
15 accurate.

16 Q Do you know if the -- if this appeal process
17 or -- or -- or some of the other sort of unrelated
18 litigation matters results in lower assessments on any
19 LID properties, do you know if the City will be paying
20 the difference in project costs between what it
21 anticipated assessing and what it ultimately collects?

22 A Yes. So the City -- if, for some reason, the
23 LID assessments changed and are lowered and the City
24 collected a lower amount, the City is obligated to
25 deliver the LID improvements. So the City would --

1 would make up the difference.

2 Q Is the -- is the City allowed to make any
3 material changes to the LID-funded projects after
4 they've been approved?

5 A So the -- the formation ordinance describes
6 the City's commitment to complete the improvements.
7 It does allow for some adjustments to the
8 improvements, but the essential elements of those
9 improvements as they're described do have to be
10 delivered.

11 Q Okay. And since not all of the plans were
12 100 percent complete when the formation ordinance was
13 passed yet, against what documents or standards is
14 the -- that material change question judged?

15 A I'd say a fundamental aspect of that is the
16 actual description that is used in the special benefit
17 study.

18 Q Okay.

19 A I mean, there's many different design
20 documents that represent the evolution of -- of those
21 projects, but that is a key -- I would say a key piece
22 is how it's described in the special benefit study.

23 Q Okay. And how would you describe sort of a
24 material change to one of the LID projects?

25 A If the fundamental benefit of the improvement

1 is reduced or, I suppose, increased as well. But
2 reduced would be the concern, if there's a fundamental
3 essence of what it's providing in terms of benefit is
4 changed or reduced.

5 Q And so I believe you testified earlier that
6 the project's estimated completion date is 2024.
7 While that's not a hard deadline, it's -- it's the
8 estimated completion date at this time.

9 But at some point would a delay in the
10 construction schedule alter the project such that you
11 feel would be materially changed?

12 A No, no. A change in the -- in the delivery
13 date wouldn't change the -- the nature of the project.

14 Q Okay. In your opinion, would the future city
15 council's decision not to appropriate the 4.8 million
16 baseline funding, would that result in changes that
17 reach that material change threshold?

18 A No. I mean, again -- the description -- we're
19 talking about the description of the LID projects.
20 They are physical improvements. The funding,
21 obviously, you're talking about maintenance and
22 operations of the park.

23 Q Okay. Okay. So there's a difference between
24 material changes to the construction of the
25 improvements versus the sort of post-2024 operation

1 and maintenance activities?

2 A I think that's correct. Uh-huh.

3 Q All right. I'm next going to bring up what
4 was entered earlier as Exhibit 128, which is the
5 Seattle Times article. I'll share my screen here
6 again.

7 Okay. Let's see. Are you able to view this
8 Seattle Times article?

9 A Yes, I am.

10 Q The -- the section I've highlighted here, new
11 projections say coronavirus crisis may cause Seattle
12 to collect 210 million to 300 million less than
13 expected in tax revenue knocking a gapping hole in the
14 City's budget, that's according to Mayor Durkan.

15 And then the next quote here is also from
16 Mayor Durkan that this will probably be the toughest
17 economic climate the City has ever faced in multiple
18 generations.

19 And the final quote is from Ben Noble, the
20 City budget director, saying impacts are likely to
21 linger into 2024.

22 And my question for this -- for these articles
23 is that is it possible that these financial
24 uncertainties could impact the LID improvement funding
25 or construction schedule as they're being built prior

1 to 2024?

2 A Well, of course, it's possible that they could
3 based on our work thus far with the budget office and,
4 you know, the 2020 budget which was just recently
5 brought forward to the council. They are not
6 impacted. There are adjustments, but we are able to
7 continue with the schedule that we have and the
8 construction contracts which have already been let
9 advancing the work.

10 Q In your opinion, does -- considering the
11 comment that these impacts could linger into 2024, do
12 you see any danger to the City's ability to finance
13 the maintenance obligations under the ordinance with
14 Friends of the Waterfront?

15 A I have no reason to doubt it at this point
16 based on the work to date on budget. Those
17 commitments have stayed strong in large part because
18 of the clear path and the endorsed path on that with
19 the city council's involvement. But, of course, it's
20 impossible to say it couldn't be impacted by it. But
21 thus far, it has not been.

22 Q Are you aware of any other major capital
23 projects in the City that have been recently canceled
24 or delayed due to financial issues?

25 A Yes.

1 Q What are some of those projects?

2 A Well, and I'm sure you're familiar with them
3 as well. You know, some key ones which have been
4 paused are the Center City streetcar project in the
5 Department of Transportation, and there are several
6 different projects that the Seattle Parks Department
7 has put on -- put on hold right now as they -- as they
8 kind of prepare for the 2021 budget. And I'm sorry.
9 I'm not going to list them off the top of my head
10 because I might -- I might get them wrong, but there
11 are a number.

12 Q And those are -- and that's fine, not listing
13 them out. But you say they are Parks Department
14 projects?

15 A Yes.

16 Q Okay. And to your understanding, is the
17 convention center project delays due to expectations
18 of reduced travel to the Seattle market?

19 A They have -- they've indicated a concern that
20 they may have to delay. They have not formally
21 delayed the convention center expansion. But your
22 underlying question, I mean, yes, they are impacted by
23 the reductions in the lodging tax which is their
24 primary funding source.

25 Q And I know the convention center one was --

1 delays are due to COVID-19. I know some of the other
2 ones we were mentioning weren't necessarily tied to
3 COVID-19. But in your opinion, are the chances of the
4 City canceling and postponing major capital projects
5 increased as a result of COVID-19 and the resulting
6 budget shortfall?

7 A Again, these are -- it's kind of a
8 hypothetical. So thus far the City has actually
9 maintained its capital program. So projects like
10 Waterfront Seattle, but not only Waterfront Seattle,
11 also major projects in SPU, City Light, SDOT have
12 advanced through COVID out of a partnership with the
13 trades and our contractors to essentially implement
14 all the safety protocols to keep that work going. So
15 the City has not seen its capital program
16 significantly delayed.

17 I'm actually not aware of delays thus far to
18 the convention center. I know they are concerned that
19 they could be delayed if they -- you know, because of
20 funding concerns. But, yeah, I mean, hypothetically,
21 of course, given this situation that we're in, there
22 could be delays to City projects.

23 Q Okay. Thank you. And I'm -- so I'm next
24 going to turn to what's been offered as Exhibit 137,
25 and this is a PowerPoint presentation by the City.

1 I'm going to share my screen. All right. Are you
2 able to see that Seattle COVID-19 response?

3 A Yes.

4 Q So this is a page -- this is a June 2020
5 presentation by the City and just wondering what your
6 comments are. It says here that there's
7 reprioritization of certain resources, including
8 10 million from the Metropolitan Parks Districts. And
9 I was wondering if you could just comment on how this
10 reprioritization might impact the park funds for the
11 Waterfront?

12 A Well, I -- first off, I am not familiar with
13 the detail of the reprioritization. I'm aware that
14 this is being done, and I can say that it does not
15 impact the commitments for Waterfront maintenance
16 funding in the Metropolitan Park District.

17 Q All right. Switching gears, I'm going to
18 share screen with -- with a document that you reviewed
19 on -- on your direct examination that was attached to
20 Jill Macik's declaration. It was Exhibit A to that
21 declaration, and I entered it as an exhibit just so we
22 can share it and talk about it a little bit more.

23 A Okay.

24 Q All right. Do you see that declaration of
25 Jill Macik?

1 A I do.

2 Q So here she describes this document as
3 Exhibit A, and we'll get to it next. But it's -- she
4 describes it as a revised and updated chart
5 summarizing the City's environmental review and
6 permitting status for each Waterfront LID
7 improvements. And, again, is this the document you
8 were reviewing on direct last week?

9 A No. This is a different document.

10 Q Okay. Are you -- are you sort of familiar --

11 A This is in Jill Macik's declaration, I
12 believe.

13 Q Yes, yes, it is. Have you -- have you
14 reviewed this document? Does it appear familiar?

15 A Yes.

16 Q And I'll just use it to reference some of
17 the -- some of the projects. There's nothing
18 inherently specific about this --

19 A Got it.

20 Q -- this document. But let's see. Some of the
21 LID project components have not reached the design
22 status sufficient for SEPA review yet; is that
23 correct?

24 A Yes.

25 Q Which are those projects?

1 A The Pike/Pine street improvements and the
2 Pioneer Square street improvements.

3 Q Okay.

4 A I mean, there's some adjustments to the
5 Pioneer Square scope. They were included -- they were
6 discussed in previous SEPA work, but we're going to
7 provide some additional documentation.

8 Q Okay. And, again, I don't want to just leave
9 this up here, so I will -- I'll stop sharing for now,
10 but I do have some follow-up questions about some of
11 the projects and the permits. So if, you know, any
12 time it would be helpful to bring this back up, please
13 just let me know.

14 A Okay.

15 Q So the Pioneer Square and Pike/Pine
16 improvements, in addition to forthcoming SEPA, are
17 they subject to any other permits or approvals,
18 including sort of preservation or landmark approvals
19 given their location?

20 A So let's see. I'm not the permitting expert
21 that Jill is. My understanding is Pioneer Square, our
22 improvements will go through the preservation board as
23 they have in the past. And Pike/Pine is a little more
24 straightforward. We don't have a preservation board
25 there, so it is primarily the SEPA.

1 Q Okay.

2 A There is, obviously, other permitting involved
3 but...

4 Q Okay. Are you familiar with NEPA?

5 A Yes.

6 Q Okay. And could you just explain what NEPA
7 is?

8 A Sure. NEPA is essentially the federal
9 Environmental Policy Act which requires environmental
10 review in many ways similar to SEPA which is at the
11 state level.

12 Q And can you explain the role of the Army Corps
13 of Engineers in NEPA review, if you know?

14 A Sure. So the Army Corps of Engineers for --
15 for local projects, Waterfront -- you know, in-water
16 projects provides a whole series of specific reviews.
17 They are also part of the NEPA process. I can't -- I
18 can't speak specifically to the role they play under
19 NEPA. But they do have a role on in-water
20 construction in Seattle, a permitting role.

21 Q Okay. Do you know if NEPA review is required
22 for any of the LID projects?

23 A NEPA review? Not that I'm aware of. There is
24 Army Corps review of projects on the Waterfront
25 program but not under NEPA that I'm aware.

1 Q Okay. The pier -- Pier 58, the Waterfront
2 Park Pier 58 project, I believe you testified -- and
3 it's not up now, but the chart that I was showing
4 earlier confirms that the -- there has been a SEPA
5 determination of nonsignificance for that project,
6 Pier 58. Do you know if there are, however, federal
7 environmental review processes still pending for that
8 project?

9 A Yes, there are. There's review underway.
10 Again, you mentioned the Army Corps, the Department of
11 Fish and Wildlife, Department of Natural Resources.
12 The resource agencies at the state level are -- are in
13 the midst of that review. The tribes are involved in
14 that review as well, as is typical of all that type of
15 in-water work.

16 Q Okay. For -- for purposes of environmental
17 review and permitting, are the Pier 58 and Pier 63
18 projects proposed as a single project?

19 A They're -- for the purposes of -- of
20 permitting -- oh, I'm sorry. I'm going to -- I'm
21 going to have to defer to Jill's testimony on that.
22 But in our conversations with DNR, we've had
23 specific -- we've looked at those two piers together.
24 And I'm not sure if that constitutes the full
25 permitting package for them being -- being joint --

1 being linked. But for DNR, I know that Pier 58 and
2 Pier 63, because of their title and jurisdiction, that
3 they specifically asked to look at them together.

4 Q Okay. That sort of gets at my next question,
5 and maybe that would be the extent of -- of your
6 answer. But do you know why certain permitting
7 processes are treating these two piers as a single
8 project?

9 A I think the primary reason for that -- again,
10 I'm most familiar with the conversations with the
11 Department of Natural Resources -- is essentially
12 looking at overwater coverage as a -- as a whole and
13 trying to understand how these projects will affect
14 overwater coverage along the Waterfront. It also
15 relates to, obviously, the nearshore habitat
16 improvements which we've been doing which is connected
17 to how much overwater coverage we're providing.

18 Q Okay. Thank you. And is -- even though
19 Pier 58 and Pier 63 are being viewed as one project
20 for certain permits, is Pier 63, the demolition and
21 reconstruction of Pier 63, part of the Waterfront LID?

22 A No, it is not.

23 Q Do you know specifically which permits the
24 Army Corps of Engineer is requiring for the Pier 58/63
25 project?

1 A No. I couldn't -- I couldn't list them
2 accurately off the top of my head.

3 Q Do you know if the Army Corps or -- or any of
4 the federal permitting agencies has determined whether
5 it will review the Pier 58/Pier 63 application as its
6 own single standalone proposal or, alternatively, if
7 that Pier 58/63 application will be viewed within the
8 scope of the full LID projects?

9 A Sorry. I don't really follow your question,
10 how it relates to the LID.

11 Q Sure. So it sounds like for some of the
12 permitting processes Pier 58 and Pier 63 are being
13 sort of processed together as one project. And my
14 question is: For those permit processes, do you know
15 if those permitting agencies are viewing the Pier 58
16 and Pier 63 projects together as a standalone
17 proposal, or because those processes involve looking
18 at Pier 58, are those agencies also expanding the
19 scope to look at the rest of the LID components?

20 A I'm sorry. I'm really not familiar -- I
21 haven't -- I'm not aware of anything to suggest that
22 the agencies have any particular interest or
23 awareness, frankly, of the LID. I've never had --
24 I've never seen those two cross over. But, again, I'm
25 not as directly involved in the conversations with the

1 agencies as Jill Macik is.

2 Q Okay. You may have said this already, but do
3 you know if the state Department of Fish and Wildlife
4 needs to approve the hydraulic project approval?

5 A They are very involved in approving the
6 overall permit, and they look at the -- all the
7 aspects of the hydrology of the project and the -- the
8 bathymetry, pile locations, and the like as it affects
9 fish habitat along the waterfront. I know that's
10 their -- their primary area of interest.

11 Q And I'm going to share screen with what I've
12 offered as Exhibit 139.

13 And so this is a March 10 e-mail between
14 Department of Fish and Wildlife and Jill. And I'm not
15 going to ask any particulars about the background, but
16 they do reference that the Waterfront Park and Pier 63
17 reconstruction project be on temporary hold until an
18 interagency meeting is held and 60 percent plans are
19 provided to Department of Fish and Wildlife.

20 Do you know if that project is still on hold?

21 A In terms of the permitting process, my
22 understanding is there -- we've been in conversations
23 with them for some time. There was a desire to have
24 an interagency meeting with tribes, which, again, is a
25 very common thing on these projects. It happens

1 multiple times. To have that meeting to review
2 current work before the permit process continued to
3 advance. That doesn't mean that the project is on
4 hold. It just means that there's a pause in the
5 permit review while we have that interagency meeting.

6 Q Do you know if that interagency meeting has
7 occurred yet?

8 A I do not. I don't believe that it has.

9 Q Okay. Do you have any --

10 A I'm not certain, honestly, whether or not it
11 has.

12 Q Okay. All right. And so do -- do you know if
13 it's been scheduled or if it's something that will
14 happen any time soon?

15 A I know there's -- there's been a good bit of
16 discussion with schedules and, you know, finding the
17 appropriate way to meet, which we're all working on in
18 lots of different venues right now. But I do not know
19 if it's been confirmed with a date yet.

20 Q Okay. Do you know if Fish and Wildlife has
21 indicated that it's going to need additional
22 mitigation conditions over and above what the City had
23 previously proposed for Pier 58?

24 A I have definitely not heard that.

25 Q Okay. Do you know if the City will need

1 Department of Ecology, Clean Water Act 401
2 certification?

3 A I apologize. This really is not my area of
4 expertise. I just don't have that detailed, you know,
5 permit-by-permit expertise that Jill does. I know
6 we -- we do intensive review with Ecology along with
7 the tribes and Fish and Wildlife and the other
8 partners. But in terms of which specific permits we
9 pull from each agency, I really can't speak to that.

10 Q Okay. You mentioned, though, that you're
11 generally familiar with the Department of Natural
12 Resources conversations and requirements for the
13 project; is that right?

14 A That's correct, yeah.

15 Q Can you just describe generally what DNR has
16 required for the LID project?

17 A I can tell you what they've -- what their
18 interests have been at Pier 58. Again, the LID has
19 not been a particular term or kind of frame for them.

20 So with Pier 58, you know, their interest, as
21 it has been kind of elsewhere on the waterfront, is
22 primarily with sort of maintaining, not expanding
23 overwater coverage. So, for example, if we came in
24 and proposed a pier twice the size, that would be a
25 significant concern.

1 As part of that, they -- their interest is
2 very much in how can we sustain and improve nearshore
3 habitat environment for -- not primarily for juvenile
4 salmon, for some other species as well. That is their
5 primary interest.

6 And then also as a -- part of why I'm more
7 familiar with them is in addition to being a
8 permitter, we are also a leaseholder. We actually
9 lease tidelands from them as do most of the downtown
10 piers. And so they also have requirements if there's
11 any type of commercial activity. For example, special
12 events or concerts, they actually require some
13 percentage rent as part of their lease. So those are
14 the -- those are the things that DNR is typically
15 talking to us about.

16 Q Okay. Do you know where DNR is in the process
17 of reviewing the, you know, various approvals and
18 permits that it needs from the Pier 58?

19 A I know we've had a series of discussions with
20 their King County shoreline lead, with their lease
21 agreement real estate lead, and have had general --
22 that's included Fish and Wildlife, the tribes, DOE,
23 other major departments that have had a general
24 agreement around the approach that we're taking --
25 taking in support in terms of both overwater coverage

1 and nearshore habitat.

2 In terms of the final permitting, I think
3 right now our focus is more on Fish and Wildlife and
4 some of the more technical permit review steps so that
5 we can then finalize the whole permit package,
6 including DNR.

7 Q Got you. And do you have any sense of what
8 that timeline looks like?

9 A I think right now we're expecting that's --
10 and, again, I'm going to defer to Jill to be more
11 specific. We're looking at about a year to complete
12 that process.

13 Q Okay. Are you familiar with the -- the
14 threatened or endangered species around pier -- the
15 Pier 58 project?

16 A At a general level, yes.

17 Q Generally, are you familiar with what
18 Endangered Species Act processes are triggered by a
19 likely to effect finding?

20 A I'm sorry. No, not at a detailed level.

21 Q Okay. Do you know if there were threatened or
22 endangered species -- you don't have to list them or
23 anything. But were there endangered species or
24 threatened species identified in the Pier 58 project?

25 A I believe there were reviews done because of

1 there being, you know, existence of endangered species
2 in the area. Again, I'm not in the detail of that,
3 but I'm not aware of any specific impact as a result
4 of the Pier 58 proposal. But I know it is part of our
5 review.

6 Q Okay. Are you familiar with the concept of
7 the fish windows for in-water construction work?

8 A Yes.

9 Q Okay. Can you briefly describe what that
10 concept is?

11 A Sure. There's certain periods of the year
12 when salmon are migrating typically when in-water work
13 is not permitted so that we're not impacting that
14 activity.

15 Q And are there sort of fish window rules
16 applicable to the Pier 58 project?

17 A Yes. Just like the work we finished recently
18 on Pier 62, the series of different state agencies are
19 involved in this, but there's a set number of --
20 there's a window that is essentially where in-water
21 work, essentially the heavy construction work of these
22 pier replacements is not allowed to take place, things
23 like pile removal and installation of new piles.

24 Q And do you know generally what that period of
25 time is when that kind of work is not allowed?

1 A It does vary some. The kind of -- again, it
2 varies a good bit, but the core winter months are a
3 particular time when we have to be careful. There are
4 some times when there's a particular activity where
5 they can request a stoppage as well.

6 Q Okay. And it does sound like there's some
7 variety there, but if -- if a construction start date
8 is sort of delayed because of a fish window, how long
9 would that in your view delay the construction
10 project? So is it a matter of you're given, you know,
11 six months before you can, you know, proceed, or how
12 would it work if you were ready to go but it was
13 during the sort of fish window time?

14 A It's usually three to four months. If we were
15 to lose a fish window, if work was not completed
16 prior, that's typically what I've seen. Again,
17 Pier 62, fortunately, didn't run into this problem,
18 but it's one of the many risks that we look at a lot.
19 And we're usually talking about three to four months.

20 Q Okay.

21 A There is often some type of work that can
22 continue. It depends where you are in construction.
23 But worst case, I'd say three to four months.

24 Q Okay. So President Trump recently issued an
25 executive order requiring sort of the Army Corps and

1 other federal agencies to expedite to the extent that
2 they could environmental approvals.

3 Are you aware of that order?

4 A Yes.

5 Q In your opinion, do you think that could speed
6 up any of the federal environmental processes we're
7 talking about with respect to Pier 58?

8 A No. I mean, it's come up as a possibility,
9 but it's certainly not something we're relying on in
10 any way.

11 Q Okay. Sort of answers my next question, that
12 conversely, if that order is challenged in court,
13 which, let's be honest, seems likely, would -- would
14 that slow down any of the federal environmental permit
15 review?

16 A Not that I'm aware of.

17 Q What is the City's estimated timeline for --

18 HEARING EXAMINER VANCIL: There's a
19 loss in connectivity with Mr. Stillwell. We'll see if
20 we can regain that.

21 MR. STILLWELL: Sure thing.

22 HEARING EXAMINER VANCIL: Give him a
23 moment and when or if we're able to regain that --

24 All right. I dropped off for a minute.

25 Mr. Foster, were you able to hear Mr. Stillwell's

1 question?

2 MR. FOSTER: I think it would be good
3 to repeat it, if that's all right.

4 HEARING EXAMINER VANCIL: Okay.

5 MR. STILLWELL: All right.

6 HEARING EXAMINER VANCIL: It certainly
7 didn't get into the record, so you will want to repeat
8 it for that purpose.

9 MR. STILLWELL: Okay. And I actually
10 believe, because I think during that time I was
11 considering my next question, the last question I
12 asked in full was whether President Trump's executive
13 order if challenged in court would slow down the
14 environmental review process, but I believe Mr. Foster
15 answered that in full.

16 HEARING EXAMINER VANCIL: Okay.

17 BY MR. STILLWELL:

18 Q And so my next question is: Are you aware
19 that Mr. Macaulay's assessment analysis assumed that
20 all the Waterfront projects are a single, completed
21 project for purposes of determining the special
22 benefit for the LID properties and that individual
23 components cannot be analyzed separately?

24 A I'm aware that they're generally considered
25 one integrated and continuous project -- contiguous

1 project.

2 Q And during the environmental review process,
3 isn't it true that some of the pending approvals may
4 require consideration of reasonable alternatives and
5 potential conditions to mitigate adverse impacts, for
6 example, on any one particular project irrespective
7 of -- of how the City is treating it as a single
8 project?

9 A It is typical in a -- in a full environmental
10 impact statement that you consider a range of
11 alternatives, if that's kind of where your question is
12 going.

13 Q Well, and also -- because I also understand
14 that most, if not -- I guess most of the projects
15 haven't had to undergo an environmental impact
16 statement necessarily. So in addition to SEPA, just
17 thinking generally about some of these -- these
18 permits, could any of the permits and approvals,
19 either they be SEPA or NEPA or any of the other
20 acronyms, impose mitigation conditions on just one of
21 the projects? For example, there could be mitigation
22 conditions on Pier 58 but not necessarily the other
23 LID projects; is that right?

24 A Yes, that's true. I guess the key thing I
25 would just offer on that is the way we approach, for

1 example, Pier 58 is we actually -- part of why we work
2 early with the agencies is to integrate the
3 mitigations required in the -- in the design from very
4 early on.

5 Q Do you know if -- can you provide an example,
6 if you -- if you have one off the top of your head, of
7 Pier 58 mitigation conditions being incorporated into
8 the fuller LID project?

9 A Again, you know, I can talk about Pier 58
10 specifically. I'm not sure the connection to the
11 broader LID here. But for permitting there, actually
12 looking at how to provide enhanced nearshore habitat,
13 so the removal of all the creosote piles and the
14 replacement with more broadly spaced steel piles, is a
15 significant environmental enhancement. That's one of
16 the mitigations that DNR, Fish and Wildlife, DOE has
17 been most focused on having us do.

18 Q Okay. Do you know if the City has commenced
19 construction on any of the LID-funded projects yet?

20 A The Promenade will be the first to commence.
21 It has not officially started construction. It is
22 part of the main corridor construction contract, along
23 with Alaskan Way.

24 Q Does the -- does the City anticipate starting
25 any of the construction projects before the last SEPA

1 review is finalized for the final two LID projects?

2 A Yes. I think the Promenade construction will
3 likely begin before those are complete.

4 Q Okay. So -- so is it correct that some
5 projects can proceed with construction before other
6 projects have completed their environmental approval
7 processes?

8 A Yes.

9 Q If, in the environmental approval processes
10 for those other projects, there are mitigation
11 conditions or, you know, even a determination of
12 significance or something like that, how would that
13 impact the other projects under -- already underway
14 with construction?

15 A It wouldn't. Again, in terms of the
16 permitting and the places where we see those
17 mitigations required, if, for example, something were
18 required on Pier 58 beyond the mitigation that we've
19 already developed with those agencies, that would not
20 directly impact the Promenade, just as an example.

21 Q Do you think, though, if something like that
22 happened where one of the other projects did receive
23 some significant mitigation conditions that it sort of
24 changed the project in a -- in a large way, would the
25 City reevaluate the special benefits from the LID

1 project to the assessed property owners?

2 A We don't see the potential for material change
3 that would change the fundamental benefit of the
4 project as a result of a mitigation condition.

5 HEARING EXAMINER VANCIL:

6 Mr. Stillwell, I just want to check with you
7 on where you are with time. The objectors indicated
8 they -- they wanted to cross this witness for two
9 hours, and there's seven other objectors yet to go.
10 And we're almost through our first hour. Were you --
11 are you within the allocation time that you all have
12 discussed?

13 MR. STILLWELL: I'm a bit over it, and
14 I can speed up my questions and only have a few more
15 here.

16 HEARING EXAMINER VANCIL: Okay.

17 BY MR. STILLWELL:

18 Q Yeah. So my final question on that -- this
19 topic and then I'll switch gears to just a few more,
20 are there any LID component projects that you feel
21 could be removed from the overall project without
22 materially affecting the overall benefits of -- of the
23 LID project?

24 A Removing a project in its entirety, no.

25 Q So the project as a whole, in your view, would

1 move forward regardless of whether or not any of the
2 individual projects being funded by the LID were
3 removed from that project scope or, you know,
4 fundamentally changed because of mitigation conditions
5 or something like that?

6 A No, no. Sorry. That's not what I was trying
7 to say. I don't think -- I don't think the City is in
8 a position to remove any LID-funded project from the
9 whole LID -- the whole package of improvements,
10 because those are all part of our commitment.

11 Q Okay. All right. So last subject here. Do
12 you have any sense of why the City decided to contract
13 with ABS to conduct the LID appraisal instead of
14 working with the King County Assessor's Office?

15 A So the City decided to do a special benefit
16 study and went through an RFQ process and hired ABS.
17 ABS has worked closely with the assessor's office on
18 data, etc. It -- I've never heard of a -- of that
19 type of work being done directly by the assessor's
20 office.

21 Q And do you know did the City communicate with
22 the property owners within the LID that those property
23 owners could share information about their properties
24 with ABS as it went about conducting the study?

25 A So there's several phases of the special

1 benefits study. Can you be a little more specific?

2 Q Sure. So there's earlier testimony, I
3 believe, from Mr. Macaulay saying that the City
4 communicated to the affected property owners that they
5 did have the ability to share information about their
6 properties with ABS. I don't know when in the process
7 that was done, and I guess that's sort of my question.

8 Is are you aware of the City communicating to
9 the property owners specifically that they were able
10 to share information about their properties with ABS?

11 A Okay. Thanks. That helps. Yes, so as part
12 of the -- his process, the ABS's process for
13 developing, there was the ability for essentially if
14 there was specific information about a property that
15 an owner had or was concerned may not be in the record
16 for the appraiser, they were able to submit that, and
17 we did actually provide, as I recall, a conduit for
18 the City to get information to Bob, to ABS, to do the
19 work.

20 Q Okay. And do you -- what was that conduit?

21 A And, again, I'm sorry. I'm remembering --
22 this was several years ago. As I recall, we had --
23 people were able to e-mail information, and -- and
24 that was provided to Mr. Macaulay.

25 Q Okay.

1 A I think there were other means that people
2 used to share information, but that was one that the
3 City specifically provided. Not -- not a requirement,
4 but it was something we did to try to help facilitate.

5 Q And -- and -- and -- and where was that
6 articulated by the City? Was it in their preliminary
7 notice? Did they get a separate letter saying, you
8 know, by the way, here's, you know, an e-mail address
9 for Bob Macaulay? Do you know how that communication
10 specifically took place?

11 A I'm sorry. I don't remember off the top of my
12 head.

13 MR. STILLWELL: That's fine. Thank
14 you, Mr. Examiner and Mr. Foster. That's all of the
15 questions I have.

16 HEARING EXAMINER VANCIL: Thank you,
17 Mr. Stillwell. Please turn off your microphone and
18 camera.

19 Mr. Reuter?

20 Mr. Reuter is here for Case Numbers 133, 134,
21 135, 136, 333, 168, 218, 219, 222.

22 Please proceed. Your witness.

23 MR. REUTER: I don't have any
24 questions.

25 HEARING EXAMINER VANCIL: All right.

1 Next on our list is Gene Burrus. Please turn off your
2 microphone and camera.

3 Mr. Burrus, please state your case number.

4 MR. BURRUS: Yes. CWF-0022. And I
5 originally had a second case number assigned, 0050,
6 but I think it's now consolidated in 00 --

7 HEARING EXAMINER VANCIL: I think we
8 subsumed the two together. Yeah, I think in the
9 beginning there were multiple submissions and they
10 just got different numbers.

11 MR. BURRUS: Got it. Thanks. Thanks.

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

13 BY MR. BURRUS:

14 Q So just a few questions for you. In your
15 direct testimony you talked about the overall budget
16 for the Waterfront LID projects being \$346 million,
17 something -- something along those lines; is that
18 right?

19 A That's correct.

20 Q Okay. And when -- when did the City first
21 come up with that budgeted number for the -- for the
22 Waterfront LID projects? Do you know -- do you know
23 about when that was?

24 A Well, it was a -- they evolved over -- over
25 many years. That specific number represents our 2020

1 budget, so, I mean, you can go back. I think it
2 originally appears in the City's CIP in 2013 and
3 carried forward from then adjusted by year as the
4 projects developed.

5 Q It has been adjusted over the years. When --
6 when -- when did it -- when did it become
7 \$346 million?

8 A That's in our 2020 budget.

9 Q And what was it in 2019, do you know?

10 A I would have to go back and look. I'm sorry.
11 I don't know off the top of my head.

12 Q Where could -- where could we go get that
13 information as it adjusted annually? I'm trying to
14 understand, you know, how we understand how it is
15 adjusted over the years?

16 A Sure. We would -- we could look at the 2019
17 budget for the City.

18 Q And -- do you know if it was \$346 million in
19 2016?

20 A I would be very surprised if it were. I
21 would -- I would assume it adjusted up since --

22 Q And when is the last time you did a review to
23 make sure that those budget numbers are correct?

24 A The last time we did a review of those budget
25 numbers, it's done annually as part of the budget

1 process as the projects advance. We do detailed
2 review, but, yeah, it's an annual -- that's an annual
3 process to set the budget for those projects.

4 Q And it would be surprising to you if -- if
5 that number hasn't gone up since 2016?

6 A It would.

7 Q Okay. Would it be surprising to you if it
8 didn't go up from 2019?

9 A Well, the key thing -- we do plan for
10 escalation, so that number includes an allowance for
11 annual escalation. I can talk about how that's done,
12 but we do expect -- I mean, the world is a little
13 different right now, but as we have developed the
14 Waterfront budget, we have continued to plan for and
15 expect costs to escalate.

16 Q Okay.

17 A That is a little bit up in the air right now.

18 Q Okay. You also testified about a significant
19 amount of the City's part of the obligation for the --
20 that \$346 million. Does it come from philanthropic
21 sources that are being coordinated by Friends of the
22 Waterfront; is that right?

23 A For the LID-funded projects?

24 Q Yes.

25 A Typically, yes, that's true.

1 Q And how much are you expecting to get from
2 Friends of the Waterfront?

3 A \$110 million has been their commitment.

4 Q Okay. In the last 12 months have, you had any
5 conversations with anyone at Friends of the
6 Waterfront?

7 A Yes.

8 Q About their -- about the progress they're
9 making on philanthropic funding commitments?

10 A Yes.

11 Q And what have they told you in the last
12 12 months about that?

13 A They haven't gotten into the specifics of
14 donors and, you know, individual gifts. My
15 understanding is they're in the 35 to
16 \$40 million range in terms of committed pledges. The
17 other thing which is especially important to the City
18 is they have met all of their commitments for actual
19 cash to fund the projects, including they have a 7 and
20 a half million dollar commitment described in the
21 ordinance we were talking about earlier for this year,
22 which they're on track to fulfill.

23 Q And so your understanding is they currently
24 have between 35 and \$40 million in commitments?

25 A Pledges, yes.

1 Q Pledges?

2 A And some cash. It's always -- it's a mix of
3 the two.

4 Q Okay.

5 A The pledges typically --

6 Q Commit -- commitments aren't -- do you know if
7 the commitments are -- are -- are an enforceable
8 contract for them that they -- that they have legal
9 recourse to get that money if it doesn't show up?

10 A The -- the pledges are a written, confirmed
11 commitment. I don't -- I think it might be a stretch
12 to say that they're legally enforceable.

13 Q Okay. If Friends of the Waterfront fails to
14 raise the additional -- fully raise the
15 \$110 million before 2024, what -- what will the City
16 have to do in order to finish the Waterfront projects?

17 A So one of the things that the O&M ordinance
18 describes is they do agree to provide internal -- if
19 they need to finance that, if they're delayed, if they
20 would be able to essentially finance that to meet
21 their commitments to the City. Ultimately, the City
22 is responsible for completing the work under the LID,
23 however. So if there was a major -- a major problem,
24 the City is responsible to complete the work.

25 Q Is there a memorandum of understanding between

1 the City and Friends of the Waterfront regarding
2 Waterfront LID funding?

3 A No, no.

4 Q So have you spoken with Maggie Walker about
5 the commitments that the Friends of the Waterfront
6 have to the City?

7 A Yes.

8 Q And -- but she has never mentioned an MOU to
9 you?

10 A We have -- we have -- the actions that took
11 place at council, the ordinance that we were talking
12 about earlier, that -- that's the key thing that
13 really outlines the -- the terms of the commitments
14 there.

15 Q Okay. Just one more question. Was the
16 decision to evaluate the six Waterfront LID projects
17 as a single entity, was that a decision made by Bob
18 Macaulay, or did the City instruct him to do that?

19 A You're referring to the special benefit study?

20 Q Yes.

21 A Okay, yeah. That -- those -- that overall
22 package, we -- we described the -- the projects to
23 Bob. He ultimately determined how they were
24 considered in terms of the real estate benefits that
25 they provided.

1 Q So it was his decision, not the City's, to
2 evaluate the six projects as one entity rather than
3 six separate entities?

4 A In terms of the -- I'm not following your
5 question 100 percent, I guess. You know, we -- we
6 definitely defined the projects. You know, we're --
7 we're the ones that are developing the program, and we
8 provided all the detailed information about those to
9 Bob. He decided how to organize those in his analysis
10 and how to present them in his analysis.

11 Q So it's your testimony that you did not
12 instruct Bob Macaulay to -- to evaluate the six -- the
13 six projects as a single entity?

14 A I don't -- I don't believe that's what I'm
15 saying. Bob -- you know, we -- we definitely present
16 those as a -- as a set of projects. If that means
17 they're one integrated package for Bob, I suppose.
18 But we're not directing him in terms of how to do his
19 analysis is what I'm trying to -- trying to get at.

20 Q But somebody made the decision to make one
21 special benefit study rather than five, four, three,
22 you know -- one instead of two or three or four or
23 five or six depending on how you -- how you divided
24 them up. Who -- who made that decision?

25 A No. I understand what you're asking now. No.

1 The -- yeah, I think the City decided the overall
2 structure would be one LID and as a result one study
3 for those projects.

4 Q Okay. So the City's decision to study it as
5 one, one special benefit?

6 A In that sense, yeah. Yeah.

7 MR. BURRUS: Okay. I have no further
8 questions. Thanks.

9 HEARING EXAMINER VANCIL: Thank you,
10 Mr. Burrus. Please turn off your microphone and
11 video.

12 Mr. Patton, for Case Number 171, your witness.

13 MR. PATTON: Thank you. Thank you.

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

15 BY MR. PATTON:

16 Q Mr. Foster, good morning.

17 A Good morning.

18 Q Are you aware of the interview that was
19 published in the AA -- AAA Journey magazine?

20 A I am.

21 Q Okay. I'm going to see if I can do this
22 better than I did yesterday and put it on the screen.
23 Well, I'm not doing better than yesterday. All right.
24 Do you see it now?

25 A Yes, I do. It's not legible. I'm seeing your

1 whole desktop but --

2 Q I did that again. All right.

3 A Yeah. Sorry. It's -- I have the same problem
4 with this. I can pull up -- I have the document. So
5 I can pull it up if --

6 Q Oh, all right. That would be great.

7 A Give me just a moment, and I'll do that.
8 Let's see. Okay. Sorry. I've got a lot of
9 documents. I'm trying to find --

10 Q Well, I can try again here. Let me see.

11 A I just -- I just had it. I'll try that again.
12 Okay. I've got it here.

13 Q Okay. So did the reporter accurately write
14 what you talked with her about?

15 A Yes. They chose -- they chose certain --
16 certain aspects of what we talked about to focus on in
17 this article, but, yes, nothing they wrote here I
18 think is inaccurate.

19 Q Was there anything of vital importance that's
20 left out from this article?

21 A Well, we talked about -- you know, it was
22 probably an hour-long interview. So as you can
23 imagine, there's a lot that was left on the cutting
24 room floor here. It's definitely written for their
25 audience. But, yeah, there's -- you know, it was --

1 it was -- yeah, it was -- they took what they wanted
2 from our interview so...

3 Q Okay. But in your mind was there anything in
4 particular that you wanted her to report that was not?

5 A No.

6 Q So in the last two paragraphs of the article,
7 her question was: What's the vision behind the
8 Waterfront project? And is your answer accurately
9 reported?

10 A I think so. I mean, again, there's so much
11 more that could be said, but, yeah, there's nothing
12 unaccurate -- inaccurate about that statement.

13 Q Okay. So the vision is that the Waterfront
14 Park gives the City the opportunity to reclaim its
15 front porch on Elliott Bay; is that right?

16 A Yes.

17 Q And will have a great public park that will be
18 a defining feature visiting Seattle?

19 A Again, you know, as, I'm sure, you know,
20 everyone here has seen, we've talked a lot about the
21 City's vision for that. This particular -- there's a
22 much broader vision. This particular publication is
23 focused on visitors to Seattle. And they left out a
24 lot of the broader vision to focus particularly on
25 that. But that's not -- that's not inaccurate. That

1 is part of the broader vision for the Waterfront
2 project.

3 Q And in the last paragraph, you were quoted as
4 saying you've designed the -- or we, the City, has
5 designed it to be a destination park; is that right?

6 A Uh-huh.

7 Q And compared to like Millennium Park in
8 Chicago, the High Line in New York, or Golden Gate
9 Park in San Francisco; is that right?

10 A Uh-huh. Sure, yeah.

11 Q Okay. So the City's vision for this park is
12 really a -- a public benefit that will -- will stand
13 out for Seattle like Millennium Park in Chicago or
14 Golden Gate Park in San Francisco?

15 A Among other things, yes. There's nothing
16 inaccurate about that statement.

17 Q And the ordinance or some of the ordinances
18 around the start described it, as well as much of the
19 Friends of the Waterfront literature, as a park for
20 all; is that right?

21 A Uh-huh, yes. Waterfront Park for all has been
22 the guiding -- part of the guiding principles for the
23 project since its inception.

24 Q So the primary purpose of creating the
25 Waterfront Park is for the greater public benefit and

1 to attract visitors from around the world?

2 A I guess I wouldn't -- I wouldn't say that's
3 the primary objective of the park. Much like
4 Millennium Park, Golden Gate Park, and the others,
5 there's -- there -- you can do multiple things with a
6 park. And, yes, we will see visitors from across the
7 world and the country as well as the City and the
8 region.

9 Q So what is the primary purpose of the park?

10 A It's to provide public space to serve the city
11 and the region.

12 Q Okay. Thank you. That is all the questions I
13 had about that article.

14 In your direct testimony on Thursday, June 18,
15 you were asked by Mr. Filipini -- this is on page 41
16 of the transcript, but I'm just going to read it to
17 you. And was the City's receipt of the philanthropic
18 funds from Friends of the Waterfront contingent on the
19 City creating an LID? And your answer was, no, not as
20 I understand it; is that right?

21 A That is.

22 Q Okay. So now I want to -- if I can do this on
23 a share, I submitted a link to a city council
24 discussion on May 16, 2018, and I want to see -- it's
25 about four to five minutes. I want to see if I can

1 share this with you.

2 A Sure.

3 Q Do you see that? Are you seeing my whole
4 desktop again?

5 A I'm seeing Debora Juarez, yes, council member.

6 Q Okay. So let me see if I can start this.

7 (Video playing.)

8 Q All right. So I just stopped it because she
9 was -- she proceeds -- Maggie Walker proceeds to list
10 the people who are on the board of the Friends of the
11 Waterfront Seattle of which she is the chair.

12 So you were sitting right next to Maggie
13 Fauker -- Maggie Walker when she made this
14 presentation; right?

15 A Yes.

16 Q And you were there when she said: So it was
17 accepted as an MOU? You said -- was there, she asked
18 you.

19 You said: Correct.

20 So that was accepted that it was contingent on
21 the passage of the LID for \$200 million as well;
22 correct? You were there?

23 A I was sitting next to her, yeah.

24 Q Yeah. And a little later in her
25 presentations, she said: So much of this money is

1 contingent upon the formation of the LID; correct?

2 A She does say that, yes.

3 MR. PATTON: Yeah. Okay. Thank you.

4 And I offer this as Exhibit 9 to Case 171. That is
5 the --

6 HEARING EXAMINER VANCIL: Are you
7 finished with your questions, Mr. Patton?

8 MR. PATTON: Yes, I am.

9 HEARING EXAMINER VANCIL: All right.
10 Is this the only exhibit that you're seeking to admit?

11 MR. PATTON: Only new one, yes.

12 HEARING EXAMINER VANCIL: All right.
13 Any objection to Exhibit 9?

14 MR. FILIPINI: No objection.

15 HEARING EXAMINER VANCIL: Exhibit 9 is
16 admitted.

17 (Exhibit 9 was admitted.)

18 MR. PATTON: Thank you.

19 HEARING EXAMINER VANCIL: Thank you.

20 Please turn off your microphone and video.

21 Mr. Tanase?

22 MR. TANASE: Thank you.

23 HEARING EXAMINER VANCIL: And, sir,
24 just if you could please pronounce your last name. I
25 want to make sure that I'm saying it correctly.

1 MR. TANASE: Sure. It's pronounced
2 many different ways. Right now it's Tanase.

3 HEARING EXAMINER VANCIL: Tanase. All
4 right. This is for Case Number 63. Your witness.

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

6 BY MR: TANASE:

7 Q Okay. Good -- good morning, Mr. Foster.

8 A Good morning.

9 Q I'm going to try and share screen. So this is
10 the timeline that you presented, is it not?

11 A I'm able to see it. Thank you.

12 Q Let me ask can you see this timeline?

13 A Sure can, thank you.

14 Q Okay. Great. And this is the timeline that
15 you presented a few days ago, I believe?

16 A Yes.

17 Q I want to just focus on the September 17
18 through January 24. I'm most interested in that time
19 period. So that's the area I just wanted you to take
20 a look at.

21 A Okay.

22 Q Okay. So -- so I'm trying to share screen
23 again. And do you see this one okay?

24 A I'm looking at a central -- city council
25 central staff memo?

1 Q Yes. Okay. So in that memo it said that
2 these meetings were held with these -- these
3 particular city council members and the Office of the
4 Waterfront. Were those meetings held with you?

5 A Yes, I believe so. I know that I was in the
6 majority of them. There may have been one that I
7 wasn't, but I don't -- I believe I was in all of
8 those.

9 Q Okay. And my only other question is: Were
10 there any other meetings that you or the Waterfront --
11 your staff Waterfront people had with any of the
12 council members in that time period?

13 A I don't believe so, no.

14 MR. TANASE: Okay. That's all the
15 questions that I have. Thank you.

16 HEARING EXAMINER VANCIL: And,
17 Mr. Tanase, is this -- which -- what's the exhibit
18 number for this? Was this -- has it already been
19 admitted?

20 MR. TANASE: This -- I -- I sent it in
21 just a couple of nights ago, but I don't know if it --
22 if it -- I'm not sure how you do that, so I don't know
23 by sending it in if that becomes part of the record.
24 If not, I would like to make this part of the record.

25 HEARING EXAMINER VANCIL: Okay. We'll

1 make sure -- I don't know what your case -- what --
2 what number we're on for your case for exhibits, but
3 is there any objection to this item being admitted?

4 MR. FILIPINI: For the record, we would
5 object based on relevance. It goes to formation
6 arguments but understand the liberal relevance rules
7 here but just want to preserve our objection for the
8 record.

9 HEARING EXAMINER VANCIL: Understood.
10 I would let that go to the weight of its value as --
11 as evidence and admit it. We will label it with a
12 number for Case Number 63 subsequent to whatever
13 number we're at for that case at that time.

14 Thank you. We're on to Mr. Jacobs will be the
15 next one, but we're going to take a break first. Is
16 Mr. Stillwell still on the Zoom meeting?

17 MR. STILLWELL: Yes. Sorry. I'm here.

18 HEARING EXAMINER VANCIL: Okay. I --
19 I -- we did not admit any exhibits from your period,
20 so do you have any to offer before we go to break?

21 MR. STILLWELL: Yes. Thank you for
22 checking in. I was planning on doing that at the end
23 of the day, but I would like to admit on behalf of
24 objectors the exhibits marked 137, 138, and 139 in the
25 exhibit list provided last night and earlier today.

1 HEARING EXAMINER VANCIL: Okay. And
2 any objection to Exhibits 137, 138, or 139?

3 MR. FILIPINI: Just a question, Jake.
4 Is 138 the Jill Macik declaration?

5 MR. STILLWELL: Yes.

6 MR. FILIPINI: No objections.

7 HEARING EXAMINER VANCIL: All right.
8 Exhibits 137, 138, and 139 are admitted.

9 (Exhibit 137, Exhibit 138, and
10 Exhibit 139 were admitted.)

11 HEARING EXAMINER VANCIL: We will take
12 a 15-minute break and return at 10:20 at which time
13 Mr. Jacobs will be the objector cross-examining the
14 witness. Thank you.

15 (A break was taken from 10:05 a.m. to
16 10:20 a.m.)

17 HEARING EXAMINER VANCIL: We return to
18 the record with Mr. Marshall on cross.

19 Mr. Jacobs, Case Number 352.

20 Mr. Jacobs, are you prepared to proceed?

21 Ms. Gielen, next -- next person on the list.

22 Ms. Gielen, are you prepared to proceed?

23 MS. GIELEN: Yes, I am.

24 HEARING EXAMINER VANCIL: All right.

25 We'll go ahead with your questions. And I believe

1 I've mispronounced your name. Can you please
2 pronounce it for me?

3 MS. GIELEN: Oh, Gielen is fine.

4 HEARING EXAMINER VANCIL: Gielen.

5 Okay.

6 MS. GIELEN: Just Gielen, yeah.

7 HEARING EXAMINER VANCIL: And your case
8 number?

9 MS. GIELEN: Oh, my case number is
10 0176. And I would like to thank the court for
11 entertaining a nonlawyer in the cross-examination.

12 HEARING EXAMINER VANCIL: It's fully
13 your right.

14 MS. GIELEN: I have a -- my condo is
15 located on Western Avenue right adjacent to the
16 proposed Promenade.

17 HEARING EXAMINER VANCIL: Okay.

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

19 BY MS. GIELEN:

20 Q So I would like to share my screen briefly
21 here if I can make this work. Hopefully that shows
22 up. Not very well. Okay. I hope that you can see
23 that well enough. Is that the case?

24 HEARING EXAMINER VANCIL: Yes. It is
25 coming through clear.

1 Q Okay. This is just an excerpt out of
2 Mr. Macaulay's testimony of the -- I believe it was
3 June 18 where he described what extraordinary
4 assumptions are, and then at the very end here is what
5 they -- they do to the -- the study. Could you read
6 the parts shaded in yellow?

7 A Sure. And apologies. My screen is a little
8 pixilated, but I think I can make it out.
9 Extraordinary assumptions are something that -- thank
10 you. That if they're found to be false could alter
11 the opinion of market value. Excuse me. So, you
12 know, they're otherwise things that are
13 soon-to-be-fact or otherwise certain information about
14 the legal, physical, or economic characteristics of
15 the property.

16 And then at bottom, we're assuming that the
17 project is complete, you know, before and after under
18 the conditions that we're looking at.

19 Q Okay. So this would imply, when you said it
20 was before and after, that both the before and after
21 conditions assumed by the -- the final study would be
22 required. So there are numerous projects in the
23 hypothetical before that include things like
24 completion of Alaskan Way, viaduct repairs, and things
25 like that.

1 So I would like to move to my next exhibit.
2 Oh, here it is. I'm sorry. Okay. What this exhibit
3 is, is Exhibit 3 of my -- revised of my case number.
4 And this is a letter that -- or an e-mail that you
5 wrote to me in response to a letter that I wrote to
6 the city council in -- let's see. It was dated
7 May 21, 2018. This is about the time when the --
8 let's see. According to the timeline, this is when
9 they're getting ready to pass a resolution on the
10 formation.

11 And I had asked a question regarding what
12 would be required to be in place in order to make the
13 LID appropriate and also what the City would be
14 committed to by agreeing to the LID. In other words,
15 what were they committing the entire City budget to if
16 they passed the LID.

17 And if you want to read this, this is your
18 statement here. Could you read the yellow? Can you
19 see it?

20 A I sure can. Yeah, happy to. One thing --

21 HEARING EXAMINER VANCIL: Mr. Foster,
22 before we get into that, typically, if there's a
23 couple sentences that need to be read into record,
24 that's fine; but if we get into larger paragraphs or
25 pages, it's a bit much. The documents do speak for

1 themselves, so we don't need to read it.

2 MS. GIELEN: Okay.

3 HEARING EXAMINER VANCIL: You have a
4 couple questions, so if you could just ask a question
5 about it --

6 MS. GIELEN: Okay.

7 HEARING EXAMINER VANCIL: -- that would
8 be --

9 MS. GIELEN: Okay. So, basically --

10 HEARING EXAMINER VANCIL: If you need
11 to familiarize yourself, that's fine.

12 MS. GIELEN: I'm sorry. I can make
13 that into a question.

14 BY MS. GIELEN:

15 Q It says the LID commitment itself doesn't
16 create a special obligation for the city to include or
17 complete the before condition projects that were
18 assumed in Mr. Macaulay's study.

19 So how do you reconcile that with
20 Mr. Macaulay's testimony that this was one of the
21 extraordinary assumptions that he made? So his
22 assessments of market value and the lift that was
23 given to the property owners is based on all of the
24 before projects being completed.

25 A So I won't -- I won't speak to Bob's

1 testimony -- excuse me. I'm sorry. Specifically, but
2 my -- my intent with this e-mail, this is, you know,
3 specifically regarding the obligations that the LID
4 formation action creates for the City. And
5 specifically their -- their specific projects that are
6 described in that ordinance. And what I was trying to
7 clarify here is that the City is then committed,
8 obligated to complete those improvements.

9 So in terms of, you know, how Bob looked at
10 that in his study, the LID commitment itself does not
11 create a special obligation to those other elements
12 that I'm aware of, and that's all I was trying to
13 describe in this e-mail to you.

14 Q And does that still seem accurate to you
15 today?

16 A I mean, again, it's -- it's a hypothetical.
17 The City is actually underway on the improvements
18 that -- that are described in terms of Alaskan Way and
19 the other kind of non-LID-funded elements. But I
20 don't -- I don't believe anything about that has
21 changed at least from where I sit.

22 Q Okay. Another question for you: Were the
23 city council and the mayor aware before they passed
24 the LID ordinance that the final assessment study --
25 final special benefit study would be negated if they

1 did not fully complete all of these other projects?

2 A That -- they were aware that in -- in acting
3 on in forming the LID the City was committed to
4 complete the project. Is that answering your
5 question?

6 Q No. My question is: The projects to be
7 completed confer a lift in property value to those
8 funding the projects and the LID. Mr. Macaulay
9 testified in several different ways that the value of
10 that property value lift was determined by the -- or
11 the appraisal in the after condition compared to the
12 appraisal in the before condition. Therefore, if one
13 of those two were changed, then the appraisal -- or
14 the value lift, here the special benefit, would be
15 wrong or could be wrong.

16 So, therefore, I'm asking you: Was the city
17 council and the mayor aware that they were potentially
18 jeopardizing the validity of the study and would have
19 to start over and do a new study if they decided not
20 to complete to the entire extent the projects that
21 were considered in the before condition of
22 Mr. Macaulay's testimony?

23 MR. FILIPINI: And I'll just object
24 that it mischaracterizes prior testimony and is
25 argumentative.

1 HEARING EXAMINER VANCIL: So,
2 Ms. Gielen, you just want to make sure that when
3 you're asking questions you don't present your own
4 argument. Obviously, to some degree that's
5 unavoidable.

6 MS. GIELEN: Okay. I'll ask one final
7 question on this.

8 HEARING EXAMINER VANCIL: You can maybe
9 rephrase your question.

10 MS. GIELEN: Pardon me? I'm just going
11 to ask a different question.

12 HEARING EXAMINER VANCIL: Okay.

13 BY MS. GIELEN:

14 Q If -- and I will not share this any longer.
15 If the City or if in the -- in the lead-up to the LID
16 completion some of the projects that were considered
17 as part of the before condition are not completed as
18 planned or are canceled or partially canceled, what
19 mechanism will the people that are being assessed the
20 LID have to recoup a potential impact to their
21 assessments based on the fact that the after and the
22 before conditions were not reflective of the actual
23 condition when the LID was passed?

24 A Let's see. So I don't believe -- I'm not
25 aware of anything under the LID statute that creates an

1 ability for property owners to recoup in that
2 hypothetical that you're describing. I think that the
3 City's focus is and continues to be delivering the
4 specific LID projects which are, you know, the basis
5 for the benefit and have been clearly articulated in
6 all the actions around the LID that we would deliver
7 those projects.

8 It's hard to answer that. It's very much a
9 hypothetical. The other elements that are described
10 in the before are usually underway at this point in
11 terms of construction. I'm not saying it's
12 impossible, but it's -- it is an extreme hypothetical.

13 Q Thank you. Let me move on. The next item has
14 to do with my Exhibit 4.

15 A Is that something I should pull up?

16 Q I'll put it on the screen here. I'm sharing
17 it. Do you recognize this as the Hearing Examiner
18 report from the pre-form -- LID formation, Hearing
19 Examiner?

20 A I'm sorry. I'm still waiting --

21 Q Do you recognize this as the Hearing
22 Examiner's report from the LID formation hearings
23 which were held July 13 through 31, 2018?

24 HEARING EXAMINER VANCIL: Ms. Gielen,
25 you're not sharing screen yet.

1 MS. GIELEN: Oh, I'm sorry.

2 Q Can you see it now?

3 A Yes. That does look like the Hearing
4 Examiner's report.

5 Q Okay. In his testimony -- or excuse me. Can
6 you tell me what the purpose of this report was?

7 A Sure. The purpose of that report was to
8 essentially collect and summarize the public input on
9 the -- on the -- it's listed right there, Council
10 Action 31812 around the LID formation hearing.

11 Q Okay. Now, in his testimony, Mr. Macaulay, as
12 others have commented several times, stated that none
13 of the -- very few property owners came to him with
14 concerns about what had been in the preliminary
15 assessment that he could have incorporated into the
16 final.

17 And I was wondering if this data that was
18 developed in this hearing process was provided to
19 Mr. Macaulay so that if there was anything that could
20 affect his -- his transition from the preliminary
21 study to the final study?

22 A I'm not aware of any -- any reason he wouldn't
23 have had access to this document.

24 Q But you did not specifically give it to him?

25 A So this -- this process was very clearly

1 prescribed. This was actually the Hearing Examiner
2 acting on behalf of the city council, and so as we
3 discussed a little bit last week, our office's role
4 was in a supporting role at that point.

5 My understanding, though, is that this
6 document was widely disseminated. I know it was --
7 you know, it's been publicly available since it was
8 published.

9 Q Okay. So it would have been accessible to
10 Mr. Macaulay, but you did not specifically ask him to
11 consider that when making the final study?

12 A We did not make specific -- no specific
13 direction like that, no.

14 Q Now I want to draw your attention to the --
15 the paragraph underneath the box. It talks about the
16 rules of the Hearing Examiner process, and,
17 specifically, I will read it. Starting at however,
18 it's talking about what input that homeowners or
19 property owners can provide. And it says any argument
20 concerning special assessments, whether as to their
21 validity or amount, can only be raised at the
22 subsequent hearing on the assessment roll. This
23 includes any arguments as to whether benefits
24 conferred by the contemplated improvements will be
25 special or general.

1 So this, basically -- I'm sorry. I'm not a
2 lawyer, but my interpretation -- I'll ask you what
3 your interpretation is of what that means?

4 A Right. Well, that makes two of us. So my --
5 my understanding of this is that during the -- you
6 know, this process that we were -- that we underwent
7 that this document summarized, the focus was on
8 arguments about the validity of the formation of the
9 local improvement district, on the merits of the
10 formation in front of council. And that any, you
11 know, specific arguments regarding a particular
12 property and the nature of the assessment and whether
13 something was in or out was considered or not was more
14 appropriate as part of the process that we're actually
15 in right now, the -- the appeal process.

16 Q Okay. So are you aware of any other
17 communication that would have been given to property
18 owners that allowed them to, in fact, bring concerns
19 on individual assessments to Mr. Macaulay so that he
20 could adjust the final study to recognize those?

21 A Any particular communication? As you
22 mentioned before, I know that there -- there were
23 conversations that took place, as I talked about
24 earlier, there were means to provide information. But
25 as is described here, you know, the -- the focus was

1 on using this appeal process to unpack and consider
2 the merits of any specific, you know -- specific
3 issues around individual assessments.

4 Q Okay. Then another question for you. In
5 those other processes that you mentioned, were -- was
6 any outreach done for the residential condominium
7 owners?

8 A Well, a lot of outreach was done specifically
9 around, you know, the actions leading up -- council's
10 actions leading up to the formation of the LID. We
11 certainly received a lot of, you know, questions about
12 the merits of the LID formation. I would say that was
13 the -- by far the majority of what the public
14 conversation was with whether it was condominium
15 owners or other types of property owners.

16 Q Do you recall having a request to or a meeting
17 with residential property condominium owners about
18 their concerns with the actual specific aspects of
19 their personal assessments or any mechanism whereby
20 they could have gotten those to you?

21 A It did come up frequently as a question about,
22 you know, methodology and a desire to, you know, get
23 into those conversations. In general -- excuse me.
24 Apologies. Our response was actually very similar to
25 the language that you shared here, that, you know,

1 those are fair concerns. They were really -- the
2 process was designed for them to be considered as part
3 of this appeal process that we're in right now. So it
4 wasn't really something we engaged in -- in -- in, in
5 any depth at that time.

6 Q Okay. One of the things that Mr. Macaulay
7 testified was that in normally when he's doing a group
8 of appraisals such as this his normal process would
9 include directly getting input from property owners or
10 his customers, so to speak.

11 So that is a normal part of his validation
12 study, and I'm asking you do you think that this was
13 allowed or enabled in this process at all?

14 A I don't think there was anything that
15 specifically as far as the city process that -- that
16 disallowed it or did not allow it. I think the scale
17 of this LID and the scale of participation, you know,
18 just the sheer number -- I think we have 6,000-plus
19 properties required Mr. Macaulay to operate -- to
20 design, you know, a way of doing this that is probably
21 a little different.

22 Q Okay. Also in his testimony Mr. Macaulay said
23 that if he had received specific objections or data
24 that was contrary to what he assumed in his
25 assessments, if he had received that during the time

1 he was doing the final study, he would have -- if it
2 was valid, he would have changed the final benefits
3 study.

4 So how do you account for the validity of the
5 appraisals in the final study since this was not
6 allowed or this was not accomplished?

7 A Well, I don't think -- I don't think I agree
8 that it wasn't accomplished. As you mentioned before,
9 there were discussions and means for -- for
10 information to be shared. I wouldn't -- you know,
11 that's -- that's very specific to Bob's testimony.
12 I'm not going to comment further on his -- his
13 testimony there.

14 Q Okay. Thank you. One more exhibit to bring
15 up.

16 HEARING EXAMINER VANCIL: Ms. Gielen,
17 you know that you're still in line to question
18 Mr. Macaulay later today?

19 MS. GIELEN: Yes, I am.

20 HEARING EXAMINER VANCIL: Okay.

21 Q Okay. I'm still sharing; is that correct?

22 A You are, yeah.

23 Q Okay. What I have up here is a page A-2 of
24 the addenda, which is Exhibit C-18 describing the
25 before plans for the Promenade in this case. Do you

1 recognize that?

2 A Yes. Could you scroll down a little bit more?

3 My screen is cutting off.

4 Q Okay. I'm sorry.

5 A Thank you. I appreciate that.

6 Q Okay. Well, I want to move down here to the
7 rebuild -- actually, that was page 1. This is page
8 A-2. This is continuing the list of the things that
9 would be in place prior to the LID. And I would like
10 to direct your attention to the fifth bullet, this one
11 right here. And that, basically, says that the street
12 will be code compliant, green stormwater
13 infrastructure in the planning strip along Alaskan Way
14 from Yesler all the way up to Pike Street. Is that
15 accurate in your estimation?

16 A Yes.

17 Q Okay. And I'd like to bring up another
18 exhibit just for illustrative purposes if I can find
19 it. Okay. This is just for illustrative purposes.
20 It's a page from Seattle Public Utilities that
21 discusses stormwater code. And it references GSI, and
22 let's see if I can scroll down here. There it is.
23 I'm sorry.

24 And it quotes the Seattle Municipal Code
25 22.800-22.808. Is that the code that would be

1 referenced in this before condition?

2 A To the best of my knowledge, yeah. I mean,
3 the documents continue to -- they're updated all the
4 time, but if that's a correct reference to the
5 stormwater code in the SMC, then yes.

6 Q Are you familiar with what the manual requires
7 or provides for, for green stormwater infrastructure?

8 A Generally, yeah.

9 Q Can you describe that?

10 A Yeah. So it basically outlines a series of
11 strategies to provide on-site stormwater management to
12 the maximum extent feasible. Projects use either
13 green systems where you have a landscape that actually
14 manages stormwater on site, or it also allows for the
15 use of biofiltration cells which are sort of an in --
16 in-ground more mechanical filtration system. The
17 Waterfront project is using a mix of the two actually.

18 Q Okay. Let's scroll down a little bit here.
19 Here's a picture of an example. I think this is in
20 High Point of a green infrastructure stormwater
21 project. And you can see that rather than being a
22 normal street with a couple of trees and a planning
23 strip it's got a significant amount more of
24 vegetation. Would this, in your estimation, kind of
25 describe how the stormwater is handled differently in

1 green stormwater infrastructure project versus a
2 regular street project?

3 A I wouldn't describe -- I wouldn't call this a
4 very accurate or representative of the -- of a typical
5 GSI project. High Point is well known to be sort of
6 a, you know, extreme in a good sense of having
7 absolutely the far maximum of what can be done with
8 GSI.

9 So, yeah, I mean, these are good examples.
10 The type of GSI you see in more -- more typically in
11 city projects is nothing this extensive.

12 Q Okay. Now from my brief look at this -- at
13 the document on the code -- and I am not a planning or
14 a street expert, there were some very significant
15 items that detailed that you would have to determine
16 the amount of mitigation or green areas to offset the
17 stormwater would be based on the actual area of the
18 project. So, for a street, they showed just a regular
19 neighborhood two-way street. The mitigation fit
20 within a normal parking strip next to the sidewalk in
21 between the street and the sidewalk.

22 What would be your expectation of the
23 necessity to have a significant amount more of the
24 green space or green area to cover the stormwater that
25 would be generated by a 5- to 7-lane paved area

1 surrounded by paved areas?

2 A Let's see. That's a complex question.
3 There's not a -- there's not a one-for-one
4 relationship. You know, these examples like High
5 Point are much more suburban frankly. I live right
6 around the corner from it. I'm very familiar with it.
7 In the downtown setting, I think what you see are much
8 more of a mix of -- of the green and the biofiltration
9 systems.

10 It's true, yes, we do -- we carefully size
11 those facilities based on how much area they are
12 managing. So in the case of Waterfront Seattle, you
13 know, the street runoff is primarily being, you know,
14 managed through those systems. And they were
15 carefully designed to be proportional to one another.
16 But there's not a -- when you're dealing with a really
17 urbanized setting like Alaskan Way, it's a very
18 different set of solutions than this. It's not sort
19 of like you just scale up depending on the size of the
20 street.

21 Q Okay. I'm sorry. I'm looking for my exhibit,
22 and I'm not seeing it here. Okay. Okay. I'd like to
23 draw your attention to CWF 0176, Exhibit 2 describing
24 a meeting that was held on June 19, 2018. Do you
25 recognize having attended this meeting?

1 A Yes.

2 Q Okay. And can you explain who, in general,
3 participated in this meeting? I don't mean specific
4 names but the types of individuals?

5 A Sure. This was part of our overall Waterfront
6 LID outreach, so there was a range of property owners
7 and industry organizations present.

8 Q Okay. And the agenda calls this meeting
9 number 7. So does that mean that there were
10 additional meetings leading up -- leading up to this
11 meeting?

12 A Yes.

13 Q And so you stated that -- I guess I already
14 have answered my next question. Would you agree that
15 one of the issues discussed in this meeting was to get
16 a valid rendering of what Alaskan Way would look like
17 if there was no LID?

18 A I don't recall if it was this particular
19 meeting, but, yes, that was a topic in this general
20 conversation --

21 Q Right.

22 A -- that came up.

23 Q Right. So at this point in time -- this is
24 June 19, 2018, there really was not a defined, you
25 might say, rendering of what the -- what Alaskan Way

1 would look like if there were never an LID?

2 A Well, it was -- it was clearly known. We
3 understood it. We hadn't actually spent resources to
4 go and do a rendering of that.

5 Q Okay. That's fine. Going to the -- the next
6 page, this was introduced in this meeting, and I don't
7 know how well you can see it. It's -- it's a
8 description -- it's got a little box here with options
9 called Promenade, widened sidewalk, and asphalt road
10 with parking.

11 Do you agree that this was a cost comparison
12 of alternatives to the Promenade which was defined as
13 the LID condition?

14 A I think, yes, I do.

15 Q Okay. One option is described as -- as the
16 after LID, which is, I would assume -- and you can say
17 yes or no, the part that was in the LID in the final
18 assessment study?

19 A I would have to look at the documents again
20 more carefully. Are you saying that after LID is the
21 Promenade?

22 Q Right.

23 A The column on the left? That -- that would
24 make sense to me, yeah.

25 Q Right. And the subtotal of the costs is

1 roughly equivalent to what ended up being the cost of
2 the Promenade as a portion of the overall LID? I
3 think it's a little bit less but very, very close?

4 A Okay. That sounds accurate.

5 Q Okay. During the meeting, you told the group
6 that you had not made plans on how you would restore
7 Alaskan Way if there was no LID because you just went
8 ahead and designed the LID. And so you did not at
9 this time -- or you were only beginning to think about
10 that when you were asked to provide a description of
11 what the street would be like if there were no LID.
12 Do you agree with that?

13 A The City has always understood what would be
14 required as we developed the project to restore
15 Alaskan Way and the Promenade. So that's not a --
16 City has understood what's required to reconstruct
17 that part of the city. Frankly, the LID piece of it
18 is relatively minor compared to all the utilities and
19 basic transportation. The city focused on advancing
20 the project in Waterfront Seattle. That has been our
21 focus which included the LID-funded element in the
22 Promenade.

23 Q Okay. Thank you. So can you describe or just
24 generally what these two other alternatives are?

25 A Sure. So apologies. I'm coming from memory

1 here. This was several years ago. This was
2 basically, you know, two other ways that that space
3 could be addressed and what the funding difference --
4 again, super, you know, quick assessment, but the
5 potential funding differences would be. The widened
6 sidewalk was basically keeping the same curb geometry
7 that the City's current plan calls for but taking out
8 all the park amenities, all the landscape, all the
9 seating, all those features.

10 And then the asphalt road with parking was
11 basically maintaining a much more narrow sidewalk,
12 more like what people know today along the Waterfront
13 and just doing what we call an asphalt patch. So all
14 that space actually where the traffic lanes are today
15 would basically be converted into some form of
16 short-term parking, and then you would have Alaskan
17 Way rebuilt under the -- essentially where the viaduct
18 had been.

19 Q Okay. Can you address the unfunded difference
20 that's shown in red on those two options, what that
21 is?

22 A Sure. I believe -- and, again, I'm going from
23 memory here. Those are the funds that would be --
24 that the City would need to find funds to -- to
25 complete those two options or not necessarily the City

1 but somewhere funds would be found.

2 Q So if you were not getting funding from the
3 LID project and you weren't doing the Promenade to
4 actually make the street whole, you would have to
5 either spend \$30 million or \$50 million out of
6 existing City coffers?

7 A Well, at the time there was also discussion
8 of, you know, other -- other types of funding, so it
9 wasn't -- I mean, sure, yeah, the City is one obvious
10 source to -- to cover that.

11 Q Okay. But there was no funding for those --
12 that improvement?

13 A Sure, yeah.

14 Q Okay. So, actually, the budget for the
15 62 million to complete the Promenade was based on
16 starting from somewhere other than full restoration of
17 Alaskan Way, because in either of these cases, there
18 would have been no basic Alaskan Way recovery
19 included?

20 So, in other words, the \$62 million is
21 overstated, and, therefore, the LID assessments are
22 being assessed on putting Alaskan Way back after the
23 loss of the viaduct and not back to where it would be
24 if it was completed; is that correct?

25 A I don't think that is. I mean, the --

1 there's -- there's a distribution of funds on the
2 City's side between all the aspects, the Alaskan Way,
3 all the features of that, the Promenade, etc. The
4 fact that there's an unfunded difference here doesn't
5 mean that the program wouldn't cover it. We would
6 essentially, you know, in all likelihood, make
7 decisions to reduce the quality of other aspects of
8 the program to backfill that.

9 But this was based on, you know, what the --
10 the -- the allocation of the different fund sources
11 was at that time and the cash flow for the project.
12 So I don't think you can quite draw the conclusion
13 that you're drawing, but, you know, it is -- yeah,
14 there is an unfunded difference there.

15 Q Okay. So what you're telling me, that if
16 there were no LID funding, the pre-LID condition that
17 is included in the \$62 million is not actually a
18 restored Alaskan Way unless the City comes up with
19 other money, and then the 62 million would be
20 overstated because you would already have gotten this
21 other funding?

22 A I'm not sure -- I mean, again, you're --
23 that's not a statement I would make. If we were in
24 one of those scenarios, we would reconsider the -- the
25 distribution of funds on, you know, other city

1 elements and, you know, find a way to address it.
2 But, again, you know, this was, you know, one
3 conversation several years ago. I don't think it
4 quite carries the weight that you're describing or
5 ascribing to it.

6 Q Okay. But, again, Macaulay used his whole
7 assessment based on the before and after condition,
8 and the 62 million actually pays to take you from not
9 what it would look like without the LID, but what it
10 would look like about right now.

11 So the 62 million really is covering more than
12 just the LID improvements?

13 MR. FILIPINI: And I'll object,
14 mischaracterizes prior testimony. It's argumentative.

15 Q Okay. I will move on.

16 All right. The next sheet shows a couple of
17 things that were handed out in that meeting. The
18 lower one was -- it says Promenade with LID
19 improvements. Does that look roughly like the
20 conceptual drawing of the LID at that time? Is this
21 Pier 54 here?

22 A It does.

23 Q And it looks pretty close to what is in the
24 final assessment study?

25 A It does.

1 Q Okay. Then I will bring you up to this
2 drawing. And this drawing was handed out to
3 reflect -- or tell me what this drawing reflects.

4 A I think just what the title there shows is,
5 basically, if we take out elements funded by the
6 LID -- and this, I think, would be the best
7 representation of the kind of -- what was called the
8 widened sidewalk option in the table you showed.

9 Q Okay. Can you describe what the green areas
10 are here?

11 A Yeah. So we honestly weren't, as we discussed
12 in the meeting, 100 percent clear what those spaces
13 would end up being, but we took out everything that
14 had been some of the amenity features that were funded
15 by the LID. So you basically would have some, as we
16 discussed, some version of either -- it would either
17 be paving or could possibly be seated area with just
18 some basic grass down in that area but not much more
19 than that.

20 Q Do you recall telling us that, in fact, that
21 green area was required to meet the standards of the
22 green infrastructure drainage and that if you did not
23 have that area as green that you would have to do
24 another kind of drainage process which was not at all
25 in the plan?

1 A I don't remember that specifically, but
2 that -- that makes sense. In addition to the roadway
3 GSI, which you were just alluding to the stormwater
4 code, the Promenade does drain into those planters,
5 which isn't required by code, but we do need drainage
6 for the -- for the Promenade as well. So that -- that
7 would make sense.

8 Q Okay. Then I will bring up another exhibit.
9 This is the final special benefit study showing the
10 area looking north from the ferry terminal with the
11 greenery and the trees, additional green spaces in
12 here?

13 A Uh-huh.

14 Q Okay. And if I continue down, that's another
15 shot, but -- whoops. Maybe I have to go up. I'm
16 sorry. Okay. This one shows the condition that
17 Mr. Macaulay was asked to use as a comparison when
18 doing the value lift study. And as you can see here,
19 it's just basically normal street trees, almost, you
20 know, very little green except for the trees. Does
21 this to you look like it would incorporate green
22 infrastructure improvements to handle wastewater?

23 A Well, GSI it focuses on stormwater, not
24 wastewater. Yes, I can see some of the features that
25 are included in the street design that are GSI

1 compliant or code compliant stormwater features.
2 They're not -- they're not -- you see -- I'm sorry. I
3 was about to try to use my mouse. But they're very
4 hard to see here, but under the trees, you see some
5 landscaped area that's addressing the GSI requirements
6 for the street.

7 Q Okay. And do you believe that a normal
8 planting strip would be adequate to handle stormwater
9 for a major lane highway like this?

10 A There are many of how that is done, yeah. It
11 would probably be a mix much like what we've got
12 designed in of both kind of, you know, bio retention
13 planters as well as some of the biofiltration cells
14 and those types of strategies for -- for a roadway
15 like this.

16 Q Okay. But as we saw previously, there
17 currently isn't a City plan to install those bio
18 systems in the Seattle Department of Transportation;
19 is that correct?

20 A I didn't quite follow that. I'm sorry.

21 Q I'm sorry. I will not ask that question.
22 So you believe that per the code it could look
23 like this with no additional greenery than you would
24 have on a normal street?

25 A On Alaskan Way, yeah, I believe that is --

1 that is accurate.

2 Q Okay. And you could do that without
3 additional money that has already been allocated in
4 the City funds?

5 A So essentially, yes. I mean, what you're
6 seeing there are the elements that are already funded
7 by the City and the State of Washington as part of
8 their partnership on the replacement of Alaskan Way.

9 Q Okay. So it's really hard to see from this
10 though the bio -- the bio cells or whatever you talked
11 about. Are those included in current City budgets
12 extraneous to the LID to handle the stormwater?

13 A Yes.

14 Q They are?

15 A Yes. You can actually -- some of them are
16 being installed already along the new Alaskan Way.

17 Q Okay. Thank you.

18 A Sorry. They're not -- they're very hard to
19 see because they're actually built into the street.
20 They're underground actually.

21 MS. GIELEN: Okay. I believe that is
22 the end of my questions.

23 HEARING EXAMINER VANCIL: Thank you,
24 Ms. Gielen. Please turn off your camera and
25 microphone.

1 Mr. William Justen, are you ready to
2 cross-examine the witness?

3 MR. JUSTEN: Yes, I am.

4 HEARING EXAMINER VANCIL: What's your
5 case number?

6 MR. JUSTEN: 0097.

7 HEARING EXAMINER VANCIL: Your witness.

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

9 BY MR. JUSTEN:

10 Q Hello, Marshall, how are you?

11 A Hello, Mr. Justen, good to see you.

12 Q Good. As you know, I've -- I'm going to read
13 this so we can move it along quicker.

14 A Okay.

15 Q As you know, I've been a longtime strong
16 supporter of a Waterfront for all, including an
17 appointment in 2012 as an advisor to the Central
18 Waterfront Committee, and I must say how excited I am,
19 having lived in the Pike Place Market for 43 years now
20 and as a property owner, as a developer of three
21 significant buildings, to see what's happening on the
22 Waterfront. For us downtown residents, the much
23 quieter environment without the viaduct is the
24 greatest possible benefit we could ever hope for.

25 My first question: Do you consider the

1 right-of-way LID improvements on the Waterfront are
2 creating a park? I think you and others have referred
3 to this as a park?

4 A Yes.

5 Q Without the Waterfront LID right-of-way
6 improvements, what would we have? Would we have a
7 park? Would we have something else? What would it
8 be?

9 A I think we'd have a transportation corridor.
10 We wouldn't have the park experience that you will
11 have with those improvements.

12 Q Okay. So it would be pretty much what we saw
13 in exhibit just a few moments ago that Karen Gielen
14 showed us of the before on the viaduct -- I mean, on
15 the Alaskan Way?

16 A A big part of what -- is part of that for me
17 is a park is both a physical thing, and it's also how
18 it is operated and maintained, which is, you know, a
19 big part of when we talk about a park, we're also
20 talking about the partnership for activation,
21 programming, and maintenance that that -- it brings
22 with it.

23 Q Would it be possible for a group like Friends
24 or something to operate, activate something without
25 the LID designation or improvements which you say make

1 it a park? Would they be able to do what the before
2 LID improvements -- would they be able to activate
3 that program, that area?

4 A In theory, yes, they could.

5 Q Okay. Are you familiar with the San Francisco
6 Embarcadero?

7 A Yes.

8 Q And there are many illustrations of it in many
9 of the exhibits to the objections that were recorded,
10 but I'm glad you're familiar with it. Do you consider
11 it a park?

12 A That's a great question. I actually worked
13 for the Port of San Francisco on the Embarcadero a
14 long time ago. I honestly -- I honestly would not.
15 That really is operated more as a transportation
16 corridor with a very wide sidewalk.

17 Q So similar to what we might have without the
18 LID? Is that --

19 A Again, this gets complicated. It would be
20 different -- it would be similar in some respects.
21 The big difference is there the Port of San Francisco
22 actively maintains that whole Embarcadero. It's
23 actually part of their jurisdiction, which is not
24 something we have here. Our port doesn't operate our
25 waterfront in that same way. I don't know if that's

1 helpful, but, you know, it's -- it's different and
2 similar in different respects.

3 Q When I look at the illustration that Karen
4 pulled up of the before that we looked at a few
5 minutes ago and I look at the Embarcadero, our before
6 waterfront looks much greener than what I see in the
7 Embarcadero that you're familiar with and I've walked
8 many times. It seems to have much more hardscape
9 concrete and much fewer trees than what we would have
10 with even without the LID; is that correct?

11 A I would agree with that, yeah.

12 Q Yeah. Mr. Burrus asked this question, but I
13 just want to confirm that it was the City that set the
14 scope of the ABS appraisal study instructing ABS to
15 consider the six projects as a single project; is that
16 correct?

17 A Given the conversation that I had with
18 Mr. Burrus in terms of the ultimate framing of that,
19 yeah, I mean, the City -- we framed the basic set of
20 projects that were to be considered in the special
21 benefit study.

22 Q Okay. Another question, did the City ask ABS
23 or other solicited appraisal firms for a proposed fee
24 and schedule only for a mass appraisal, or were they
25 also asked for proposals for a direct appraisal of

1 properties in the LID?

2 A I'm sorry. It was -- the contract was managed
3 by a different city department. I really can't speak
4 to the specifics of that.

5 Q So is there a place where we could find the
6 RFP that was sent out to the different appraisal firms
7 to see what they were requested to propose?

8 A You certainly could. That's a part of the
9 public -- that is a public document, yeah.

10 Q Okay. And I think that would be important for
11 me to find that. Kind of my last question,
12 approximately how much money has the Office of the
13 Waterfront project spent today, say to the nearest
14 million dollars, on soft costs? I would say that
15 includes City staffing, design consultants, special
16 benefit appraisals, legal fees, and so forth. Kind of
17 what -- what's the meter run up so far?

18 A You mean everything involved in advancing the
19 Waterfront program?

20 Q Yes.

21 A The City costs, consultant costs, oh, I would
22 say it's -- easily it's probably close to
23 \$100 million.

24 Q Okay. That's soft costs. That's not
25 including any construction costs on any of the six

1 projects; is that correct?

2 A I would have to go back -- that's the kind of
3 thing you would have to do an analysis of to get a
4 totally complete answer. But I know in terms of City
5 staff costs, life to date on the program, the
6 consultant to design, engineer, permit, every -- you
7 know, and all those aspects of the project, yeah, we
8 could get you a very precise number, but I would say
9 it could be close to \$100 million.

10 MR. JUSTEN: Okay. That's all I have.
11 Thank you, Mr. Foster. Thank you, Mr. Hearing
12 Examiner.

13 HEARING EXAMINER VANCIL: Thank you,
14 Mr. Justen.

15 Mr. Jacobs, are you prepared to proceed?

16 MR. JACOBS: I am.

17 HEARING EXAMINER VANCIL: Okay.

18 MR. JACOBS: Okay.

19 HEARING EXAMINER VANCIL: And you're
20 still here for Case Number 352; is that right?

21 MR. JACOBS: Correct.

22 HEARING EXAMINER VANCIL: Okay. Your
23 witness.

24 MR. JACOBS: Okay. Sharing screen. Is
25 my screen shared? Is my screen shared?

1 HEARING EXAMINER VANCIL: Yes.

2 MR. JACOBS: And, hopefully, it's at a
3 readable size?

4 HEARING EXAMINER VANCIL: You may want
5 to increase the size.

6 MR. JACOBS: Okay. What I'm going to
7 cover spans these two pages, so I'll start at the top.

8 MR. FOSTER: I am going to apologize.
9 I'm just barely able to see this. If there's any way
10 you can increase the size of it, it would really help.

11 MR. JACOBS: Working on it.

12 MR. FOSTER: For some reason, it's
13 only -- it's just showing a tiny little vertical
14 sliver of your -- of your screen. I don't know if
15 others are having that issue or not.

16 HEARING EXAMINER VANCIL: Yes.

17 MR. JACOBS: It is showing a tiny
18 little sliver on all screens?

19 HEARING EXAMINER VANCIL: It does show
20 the document, but for some reason, yours -- generally,
21 when people share a screen, the whole document fills
22 the screen, and yours is narrow.

23 MR. FOSTER: I can read it. It's fine.

24 HEARING EXAMINER VANCIL: You've now
25 increased it, and it's more readable both to the

1 witness and myself.

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

3 BY MR. JACOBS:

4 Q Okay. It's just for reference purposes. I'm
5 not going to -- I'm not going to read much off of it.
6 I'm going to actually not pay attention to it right
7 now. But let me start at the beginning. Good
8 morning, Mr. Foster.

9 A Good morning.

10 Q Downtown Seattle parks are highly challenged
11 by inadequate resources for addressing serious public
12 health and safety issues surrounding substance abuse
13 and mental illness which, of course, results in
14 homelessness. How does -- how does the City plan to
15 better address these issues within the LID than it
16 does in other city parks?

17 A Sure. The key thing is the partnership that
18 we have developed with the City Parks Department,
19 Friends of Waterfront Seattle. What we found in other
20 spaces -- and these are not perfect strategies, but
21 they have been effective -- is that when you have a
22 dedicated team doing maintenance, programming, as well
23 as providing social service outreach to people in
24 crisis, if they're dedicated and they're focused on a
25 particular space, we can significantly improve

1 conditions in terms of safety and accessibility and
2 attractiveness of those public spaces.

3 And so the partnership with the Parks
4 Department and Friends of Waterfront Seattle creates
5 the dedicated staff. It creates both the resources to
6 maintain but also to do active programming and to
7 provide direct social service outreach. The Friends
8 actually already provide direct social service support
9 to help folks in crisis on the waterfront today, and
10 that will scale up with that new partnership.

11 Q Fantastic. Is that dedicated staff a 24/7
12 type of operation?

13 A So there is -- yes is the short answer.
14 You'll see, you know, maintenance staff, programming
15 folks, people doing recreation by day. There is also
16 security in the evening.

17 Q And how many individuals would you expect to
18 be providing security services at night?

19 A Well, that's -- okay, so I would have to go
20 back and look at our detail of our operations plan.
21 What I recall off the top of my head is that we have
22 two to three typical walking a beat, if you will, up
23 and down the waterfront. We also have some features
24 of the new park that would have the -- would actually
25 close at night.

1 Q And -- excuse me. How -- how would you
2 close -- would these areas just be closed by signage
3 or would there be gates or how would you secure those
4 areas at night?

5 A Yeah. Typically not gates. There's very few
6 parts that are where that's physically possible.
7 We're looking at a range of strategies including, if
8 you've been to the Olympic Sculpture Park, they
9 actually use a laser technology that will indicate if
10 someone has entered the space and inform their --
11 their staff that someone has entered the space late at
12 night. Those are the types of strategies that
13 we're -- that we're using.

14 Q How cool. Love it. Thank you.

15 And as far as outreach for people in distress,
16 a lot of that happens late at night has been my
17 experience as a downtown resident. Would those people
18 be on call for late-night situations?

19 A They are actually already on call. Yes is the
20 short answer to your question. And in those kind of
21 situations, that's actually done in partnership with
22 the Seattle Police Department. They have a program
23 that you've probably heard of called Law Enforcement
24 Assisted Diversion where social service staff come out
25 with -- with sworn officers to stay safe, and that's

1 typically how any kind of late-night response has been
2 done.

3 Q That's -- I -- I know that program as the LEAD
4 program.

5 A Correct, yeah.

6 Q It's -- and the last information I have on it
7 showed that it -- it doesn't divert -- it hasn't
8 worked as well as hoped for. What -- what -- you
9 know, what's your -- what's your knowledge about how
10 the LEAD program has worked -- how effective has it
11 been?

12 A The waterfront was actually one of the -- I
13 believe it was actually the first space where SPD
14 piloted the program, and, again, I mentioned Friends
15 of Waterfront Seattle has been an active partner with
16 both SPD and the social service organizations that
17 support it.

18 And I'm sorry because I don't have the exact
19 figure to cite, but we saw a significant decrease in
20 the first year of LEAD on the waterfront of citations
21 for criminal behavior, public disturbance on the
22 waterfront. I want to say it was either 20 or
23 30 percent reduction in citations as we started the
24 LEAD program.

25 What we've learned because we continue -- we

1 meet with the chief. We meet with the West Precinct
2 captain on a regular basis. That program needs to
3 have dedicated staff. It needs to have -- it's kind
4 of like my larger point about maintaining the
5 waterfront. They need to have people who are
6 committed to a particular place, which is what we had
7 happen initially with LEAD on the waterfront, and our
8 goal, if we can get this partnership in place with
9 Friends, is that we will basically bring that kind of
10 dedicated commitment back.

11 The chief of police is a member of our new
12 Waterfront Oversight Committee, and so there's a
13 personal investment there to help support continuing
14 to strengthen the LEAD program. I acknowledge what
15 you're saying. There have been some problems and some
16 challenges more recently as it -- as it spread
17 citywide or at least downtownwide.

18 Q So -- so the LEAD program operates through
19 SPD, and as I understand it, there's also public
20 health officer that addresses this because we know
21 that homelessness is -- is really a health problem.
22 It's not a -- it's not so much a -- it can't be cured
23 by policing. So --

24 A That is true, yeah. The social service
25 providers, the outreach workers, they are literally

1 hand in glove with the police on this program.

2 Q Okay. And so you're confident that -- that
3 there is going to be that commitment to police that's
4 going to improve the effectiveness of the LEAD
5 concept; is that true?

6 A I am confident. I do think, like anything,
7 there are, you know, challenges to do to work through,
8 but all of my conversations with those staff, the
9 chief of police, and others have been very supportive
10 of what we're doing here.

11 Q Okay. Victor Steinbrueck Park is very close
12 to -- to the proposed LID elements. Was there ever
13 any consideration to bring it into the maintenance and
14 security agreement that the City has already entered
15 into?

16 A No, there was not.

17 Q In your opinion, should it have been
18 considered as an addition?

19 A Similar -- conversations about similar
20 approaches to Victor Steinbrueck have been had and
21 continue to be. It's more the Pike Place Market
22 Preservation and Development Association, the PDA
23 there, the Pike Place Market Historical Commission
24 both have authority and jurisdiction there.

25 And so if those types of strategies are going

1 to be used, it might be a good thing, but it would be
2 a slightly different partnership than the waterfront
3 that would probably involve those organizations more
4 directly.

5 Q That makes sense. Well, Victor Steinbrueck
6 Park is sort of a disowned stepchild of the -- of the
7 market, but that's another issue.

8 Moving on to a little bit different subject,
9 how did the City decide what amount of money they
10 wanted from property owners to partially fund LID
11 developments -- LID -- LID improvements?

12 A That evolved over the development of the
13 waterfront strategic plan -- apologies for the
14 background noise -- and ultimately was discussed in a
15 range of different settings in the City budget as
16 probably the best place to see that. You can actually
17 see the -- the evolution of it separately. It was --
18 excuse me. I had a little distraction. Excuse me.
19 Sorry.

20 Q Life calling.

21 A Yeah, I am trying to balance a couple
22 different things. Apologies.

23 Q No problem.

24 A So your question was specifically how did we
25 develop that. I would say, yeah, the budget documents

1 show the development of the LID over time. It
2 actually reduced in -- in scale significantly over the
3 years from 250 to 300 was discussed initially to the
4 160 million that was -- that was adopted.

5 Q In the -- thank you. In the early versions of
6 the strategic plan, there was an analysis of how other
7 cities that were considering large-scale public
8 benefit programs or developments. It analyzed the
9 funding sources that they used for those projects.
10 Virtually none of them used LID financing according to
11 my review of those documents. How did the -- how did
12 Seattle decide to use a LID for such a significant
13 portion of the funding when other cities had -- had
14 not?

15 A Well, LIDs are a very particular tool for the
16 State of Washington first off in terms of how they're
17 structured. They're very similar -- similar types of
18 tools that capture real estate value that are used in
19 other projects. So they're not -- these types of
20 tools are not uncommon. The LID is a very particular
21 tool to the State of Washington in terms of how it is
22 set up.

23 Q Did it concern you that from the early stages
24 of LID use where, you know, utilities were being
25 extended, where roads were being paved, where there

1 was a very objective way to -- to identify and to
2 calculate the special benefits for the abutting land
3 owners, did it concern you that using a LID in -- in a
4 heavily developed urban environment would create a
5 level of complexity of parsing out the special benefit
6 between over 6,000 properties, including six or seven
7 different property classes? Was that ever a concern?

8 A It was a topic of much discussion. I think
9 the key thing is we understood that the LID statutes
10 supported its use for park improvements and amenities
11 provided there is special benefit that can be shown.

12 And I think there was a methodology developed
13 to how to tier the benefits based on the proximity to
14 the park improvements that made sense and a good
15 record of other similar projects which are discussed
16 in the special benefit study and the feasibility
17 report that showed the real estate value that park
18 improvements generate to properties like those around
19 our waterfront. And so we felt comfortable advancing
20 it as a tool.

21 Q Are -- are you familiar with the Crompton
22 research?

23 A Not directly, no.

24 Q Okay. I'm going to do a little segue here.

25 A If I may, I apologize. I don't mean to

1 interrupt you. I just need to -- I'm in a tough
2 personal spot. I apologize in terms of our timing. I
3 just want to get a gauge of our timing so that I can
4 inform my family how much longer we expect to go.

5 Q I should be done in ten minutes.

6 A Okay. Thank you so much.

7 Q You're welcome. I'm focusing upon -- this
8 gets back to the screen share. That's a focus of --
9 that goes back to a finance committee -- subcommittee
10 meeting in August of 2011. This is way back at the
11 early stages of the LID's development. And there was
12 an appraiser presenting information on LID financing
13 to the finance subcommittee on pages 5 and 6 of the
14 document of this exhibit.

15 Per page 6 in her second to the last comment,
16 she says, quote, ABS, which was the name of the
17 company, the appraisal company she worked for, ABS
18 looks at whether they have included all elements for a
19 property in their before and after assessment. ABS
20 has estimated special benefits from 450 to
21 \$600 million and values increase of 1.1 percent to
22 4.5 percent cumulatively for all properties benefited.

23 That was -- that was her quotation. This was
24 kind of her marketing -- part of her marketing pitch
25 I'll characterize it as.

1 The presentation was followed by questions
2 from finance committee members. One comment was
3 documented as follows. And in quotes from the -- from
4 the exhibit -- and this was a finance committee
5 member. Committee member comment, she asks a
6 question. How do we make sure we get to the
7 \$600 million figure?

8 The appraiser replied: You need a more
9 in-depth study.

10 If you were a property owner within the LID,
11 would you find the above exchange between the City and
12 their appraisal vendor disturbing?

13 A I apologize. Can you just repeat your final
14 piece of your question one more time for me?

15 Q I'll start with the comments. Committee
16 member comment, how do we make sure we get to
17 \$600 million?

18 The appraiser replied: You need a more
19 in-depth study.

20 So my question was: If you were a property
21 owner within the LID, would you find the above
22 exchange between the City and their prospective
23 appraisal vendor disturbing?

24 MR. FILIPINI: And I'll object,
25 Mr. Hearing Examiner. Even within the liberal

1 boundaries that we're observing here, I would object
2 to the relevance of his question to an apparent
3 conversation in 2011 that Mr. Foster has not been
4 established he was part of.

5 HEARING EXAMINER VANCIL: Sustained.

6 Q My last question is: Mr. Foster, do you fully
7 expect the finished project to ever look like the
8 ethereal and wonderfulness of the renderings included
9 in the special benefit addenda?

10 A Yes, I do.

11 MR. JACOBS: I'll check back with you
12 in five years. My questioning with Mr. Foster is
13 complete. Thank you, Mr. Foster.

14 MR. FOSTER: Thank you.

15 HEARING EXAMINER VANCIL: Thank you,
16 Mr. Jacobs. Thank you, Mr. Foster.

17 That concludes the cross-examination of this
18 witness. We can pick up and continue with
19 Mr. Macaulay if he is available.

20 MR. FOSTER: All right.

21 HEARING EXAMINER VANCIL: Welcome back,
22 Mr. Macaulay. Welcome back. Again, Mr. Macaulay, you
23 remain under oath and affirmation from earlier.

24 MR. MACAULAY: Yes, Mr. Hearing
25 Examiner.

1 HEARING EXAMINER VANCIL: And your
2 witness, Mr. Jacobs.

3 MR. JACOBS: Thank you, Mr. Examiner.

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

5 BY MR. JACOBS:

6 Q Okay. Starting back, okay, the final benefit
7 study noted that Dr. Crompton's research suggested a
8 positive impact of 20 percent on average on property
9 values abutting or affronting a passive park area.

10 It goes on to conclude that if it is a heavily
11 used park catering to large numbers of active
12 recreation users, then the approximate value may only
13 reach 10 percent and affect properties two to three
14 blocks away. Does this agree with your recollection?

15 A Yes, roughly. My recollection of his study,
16 yes.

17 Q Okay. Have you -- have you visited many
18 Seattle parks, Mr. Macaulay?

19 A Yes, a number of them over the years.

20 Q Excellent. Which of the parks you visited
21 seem to most embody Dr. Crompton's description of
22 nature-based passive park areas?

23 A We -- we were really relying on -- on more
24 urban types of parks and parks examples, so, yeah, I
25 really can't answer that. It's -- it's beyond the

1 scope of what I was looking at.

2 Q Have you ever walked around or visited Green
3 Lake Park?

4 A Yes.

5 Q Would you agree that Green Lake Park probably
6 embodies Dr. Crompton's description of a park catering
7 to a large number of active recreation users?

8 A It would have similarities, yes, certainly.

9 Q Okay. Thank you. The prominent feature of
10 the City's roughly 200-foot-wide central waterfront is
11 a 6- to 8-lane major truck roadway with drive and
12 parking lanes between roughly 76 feet and 96 feet wide
13 connecting surface transportation to water and air
14 transportation facilities.

15 Active users on Alaskan Way include oversized
16 trucks, tanker trucks transporting flammable
17 materials, other large trucks, buses, cars, and
18 bicycles, all of which will be unattractive nuisances
19 to those expecting a parklike environment. How did
20 you reconcile Crompton's active users description to
21 Alaskan Way's active users?

22 A Well, the traffic flow through Alaskan Way
23 would be -- that -- that is not part of the LID
24 improvements, but that would be the same both in the
25 before and after. So that type -- any consideration

1 in that respect was the same in both the before and
2 after of our valuation.

3 Q Okay. So -- so I'll -- I'll refer to all of
4 the Alaskan Way nuisance aspects. As I understand it,
5 that it will not change or be much different between
6 the with LID or without LID. However, it is -- it is
7 an integral part of the -- of the LID's experience.
8 It is something that bisects the Waterfront, the
9 Promenade, and the piers from everything east of the
10 Waterfront and Promenade. It's something that cannot
11 be ignored. It has -- it has a very detrimental
12 impact on the experience that visitors will have on --
13 on LID improvements.

14 Are you -- are you saying that that is not
15 something that can be taken into consideration in your
16 calculations of special benefits?

17 A I'm saying that it was considered both in the
18 before and after conditions.

19 Q So -- so was it considered as a nonissue in
20 both the before and the after?

21 A Well, essentially, it's a -- it's a
22 transportation corridor that is roughly the same in
23 the before and after condition, so in that context, it
24 was considered as a transportation corridor both in
25 the before and after conditions.

1 Q Okay. Thank you. A little bit of a segue
2 here, what one or two aspects or topics of the final
3 special benefit report best address the
4 proportionality of the special benefits and the -- and
5 the assessments that were derived from them?

6 A I believe the best aspect that reflects
7 proportionality is just looking at how the difference
8 in market value as we -- we show for purposes of -- of
9 our study and a percentage amount, although this
10 special benefit is a dollar amount, we show it as
11 percentage change, just to help the reader see how the
12 proportionality changes when you move further and
13 further away from the various elements of the LID
14 improvements.

15 Q So I think what I'm hearing is that proximity
16 to the -- the improvements was a major consideration,
17 one of the -- one of the biggest considerations in
18 your effort to display proportionality?

19 A It wasn't all of the considerations, but it
20 was -- it was certainly a strong consideration.

21 Q Okay. In your report you included a table
22 titled Estimated Special Benefit Ranges by Property
23 Class.

24 A Yes.

25 Q And it contained -- contained six or seven

1 different properties with a high and low range of
2 property value increases.

3 A Yes.

4 Q Do you remember that?

5 A Yes, I do.

6 Q Okay. Was that also a major effort toward
7 demonstrating proportionality?

8 A Yes. It was -- it was designed to just inform
9 the reader of the conclusions we reached in our
10 report, so it was done for informational purposes.

11 Q And to -- and to -- and to show
12 proportionality; yes?

13 A It could be used in that context, yes.

14 Q Okay. So -- so -- so the fact that the
15 special benefit ranges for the different properties
16 were so closely aligned was not as important as
17 proximity to LID improvements? I think that's what
18 I'm hearing from you; is that correct?

19 A Yes. That -- that -- that table is
20 summarizing our findings, and proximity would have
21 been one of the factors that go into the before and
22 after valuations of what we're doing.

23 Q Okay. On the topic of comparable parks, you
24 testified that none of the comparable projects you
25 looked at are highly similar to the waterfront LID

1 projects; is that correct?

2 A What we're saying is that a lot of those
3 studies looked at both the before and after
4 conditions, and a lot of the -- particularly the
5 before conditions are dissimilar in a lot of ways to
6 the Seattle project. Because in the before condition,
7 we're recognizing that there's a viable waterfront in
8 the before. And a lot of those -- a lot of the other
9 studies were redevelopment projects. So they had a
10 much different before element than what we're looking
11 at.

12 Q Okay. How did you identify and assess
13 similarities and differences, and where is this
14 information documented?

15 A Well, again, it's -- it's discussed in our
16 report, obviously, and just through this hearing
17 process and being asked questions. So, you know,
18 mainly within the report, you would find that
19 information.

20 Q And would there be any -- any backup
21 information above and beyond the report that would be
22 available to the public?

23 A Yes. We have a significant backup file that's
24 available to the public that's on the clerk's website.

25 Q Okay. That specifically addresses how you

1 identified and assessed the differences and
2 similarities between the waterfront LID and the
3 comparable projects?

4 A That would be mainly summarizing our reports.
5 The background information that we relied on is -- is
6 in the clerk's file.

7 Q Okay. Did you make any adjustments for the
8 similarities and the differences, and where is that
9 information documented if you did make adjustments for
10 the similarities or differences?

11 A Again, given the -- the large magnitude of a
12 project like this and the scope of our services being
13 a mass appraisal, which is very typical and consistent
14 in doing large local improvement district projects
15 like this with multiple -- multiple thousands of
16 properties, we don't go into that level of detail.
17 It's more summarized in our report, and then if we're
18 asked to prepare a report to go into more detail, we
19 have sufficient information in our file to do so.

20 Q You testified that the Overlook Walk is unique
21 from other improvements. How did you value this? And
22 where is the work documented?

23 A Again, a similar analogy, we were looking at
24 other projects that have unique amenities such as
25 Boston, New York, Chicago. They all have unique

1 amenities. They're not identical to the Overlook
2 Walk. It's going to be very, I think, iconic and
3 unique to the City of Seattle market. But we used
4 other types of amenities that those parks have just to
5 gain the reaction that it had to those real estate
6 markets and make comparisons to how potentially it may
7 impact the Seattle waterfront project.

8 Q Okay. Thank you. How did this information
9 get used in coming up with the special benefit
10 percentage increases in spreadsheets and the cap rate
11 changes?

12 A Yeah. Again, when we're doing an appraisal,
13 we try to bracket everything. As you can see on our
14 worksheets, we're -- we're trying to reflect the
15 market's perception of those changes. So we're using
16 that -- that background information. We're using
17 local market information and relying on both of those
18 in just making judgment estimates on what we feel
19 recognizing the before condition that we have a viable
20 waterfront amenities and then in the after condition
21 we have a -- we have a significantly improved park
22 waterfront based with unique streetscape and unique
23 Overlook Walk amenities so just to do -- to try to
24 break down as much as possible in ranges and make
25 judgment calls within those decisions.

1 Q Thank you. Exactly what local data did you
2 look at for the before values?

3 A Yeah, again, I would refer you to our -- our
4 background file but significant research into supply
5 and demand, vacancy, rental information for all the
6 various project types, an abundance of comparable
7 sales for -- for condominiums, supply and demand for
8 condominiums, apartments, office, retail, broad
9 spectrum of properties that we're appraising.

10 Q And exactly what local data did you look at
11 for determining the after values?

12 A Again, primarily, we looked at other -- other
13 market areas and how they reacted. We also had a
14 significant amount of -- of market-based information
15 as this project had -- had -- had occurred over --
16 over -- over time. For instance, the Maritime
17 Building sold right at the time that the viaduct was
18 coming down. They were right on the waterfront, aware
19 of the formation of the LID. It played into their
20 purchase decision.

21 So as our analysis unfolded, we had -- we had
22 some new information, but, again, we needed to make --
23 we needed to make adjustments to the -- those factors
24 that were relevant based on the comparable sales in
25 the market as this unfolded. So the local information

1 we had didn't obviously truly reflect the -- the after
2 conditions. So we relied on review of other studies
3 that I mentioned previously to help aid us in our
4 decision making process on the market value impact
5 from before and after the LID improvements.

6 Q Thank you. Thank you. You testified that you
7 omitted the Sculpture Park because there was no
8 indication of special benefits coming from that park;
9 is that correct?

10 A Well, we -- we -- we discussed it in our
11 report. It's also discussed in the 2011 nature -- not
12 nature conservancy. The conservancy trust for public
13 lands -- I'm sorry. The Trust for Public Lands report
14 that's in our background studies. They mentioned
15 the -- the Sculpture Park in that study, and we
16 recognize that there's -- there's -- there's --
17 there's a positive market amenity that's been derived
18 from that park. And that -- that's addressed in our
19 report.

20 Q So -- so did you consider that an important
21 piece of local data or -- or -- or not?

22 A Well, it was a piece of local data that really
23 came more into play when we were trying to derive the
24 LID boundaries. Because it does have an influence on
25 properties that are -- that are near it.

1 Q Okay. Did you look at what the benefit is of
2 being close to parks in Seattle such as South Lake
3 Union Park, Discovery Park, Green Lake Park, Magnuson
4 Park?

5 A Yes. That would have been discussed in the
6 2011 study I referred to.

7 Q The 2011 -- refresh me. What was the name of
8 the 2011 report that you're referring to?

9 A The -- The Trust for Public Lands prepared a
10 report in 2011 that addressed those issues.

11 MR. JACOBS: Okay. Let's see. I am
12 complete. I am done. Thank you. Thank you very
13 much, Mr. Macaulay.

14 MR. MACAULAY: Thank you, Mr. Jacobs.

15 HEARING EXAMINER VANCIL: Thank you,
16 Mr. Jacobs.

17 Ms. Gielen?

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

19 BY MS. GIELEN:

20 Q I'll figure out the technical things
21 eventually. Hello, Mr. Macaulay.

22 A Hello.

23 Q I would like to start with a hypothetical
24 question for you. If you had a building that was
25 three blocks, say, from the waterfront and you were --

1 you were looking at it -- maybe it's the same building
2 or exactly the same configuration and it was either a
3 hotel, an office, a condominium, or an apartment, what
4 would be the difference between those four different
5 types of property in terms of the value that they
6 would get from being in approximate -- proximate to
7 the waterfront?

8 A Yeah, typically, we -- we looked and
9 hypothetically for three blocks away, and it's a
10 hotel, you know, versus an office. And we're just
11 simply reflecting what we find in the market, and,
12 typically, we found with the -- the strong influence
13 that other similar projects seemed to have in the
14 marketplace and in inviting tourism that hotels
15 typically reflect a slightly higher increase
16 difference in market value than, say, an office
17 building would.

18 Q How about condominiums and apartments?

19 A There -- there would be, again, a hotel
20 would -- would typically benefit slightly more.

21 Q Okay. So what about the comparison between
22 the office and the condominiums and the apartments?

23 A Yeah, I would just -- again, it would depend
24 on the -- the physical nature of that building, if it
25 had retail in it, if it was an office building, for

1 instance. The same with an apartment, did it have
2 retail -- did it have retail in it. It would just --
3 it would just really depend on the physical elements.

4 Q And so if they were the same age, quality of
5 construction, etc., all things being equal, did you
6 have a rule of thumb that would guide you in making
7 those valuations?

8 A Again, it just would have been on a
9 parcel-by-parcel basis and our determination of the
10 impact we felt that property would have on the market.

11 Q Okay. Thank you. I would like to bring up,
12 if I can be successful in doing this -- I apologize.
13 I thought I had everything set up here, and I didn't.
14 Okay. Am I sharing at this point or not?

15 A No. I don't see anything yet.

16 Q Oh, I see. Okay. I don't know how to do
17 that. Okay. I've got it up on my screen, but I
18 don't -- okay. We'll try it this way. Oh, there we
19 go. Can you see that now?

20 A Yes.

21 Q Okay. I'm sorry. This is Exhibit CWF-0375,
22 Exhibit 6, the letter from Mary Hamel regarding
23 residential condominium valuation.

24 A Okay.

25 Q And I think it's been covered before that you

1 for your -- or your appraisals you used the -- the
2 data describing the properties that's in the King
3 County database when you did your assessment but not
4 the actual assessment that they made; is that correct?

5 A That's correct.

6 Q Okay. If, hypothetically, the assessor's data
7 relative to a particular property had a major error,
8 say a description of a view that was entirely
9 inappropriate for the view that was actually existing
10 in that unit, would that then carry over into your
11 appraisal?

12 A It potentially could, yes, and through --
13 through -- through the outreach and through the --
14 through the process of doing this, that any relative
15 information that property owners had that they wanted
16 us to consider could have sent it in through the City.
17 And the City then would have sent it to us.

18 Q Okay. As we discussed earlier, was there
19 really an opportunity made available for homeowners --
20 I'm talking about condominium owners -- to bring that
21 information forward to you?

22 A Certainly, I mean, it's my understanding that
23 the City had a website where that was readily
24 available to do so.

25 Q Okay. So when you were looking at your

1 appraisals, since you didn't actually go into the
2 units themselves, if you, for instance, looked at a
3 building and there was one unit, say, that had a
4 different before -- a really big increase from their
5 2017 tax assessed value compared to the other units in
6 that building for the before LID condition, would you
7 consider that an outlier?

8 A No. We typically didn't -- didn't rely on
9 the -- the assessed value. Oftentimes, it can vary as
10 you've seen throughout the course of even this
11 hearing. They can -- the assessor's data can -- or
12 the assessor's values can vary considerably from --
13 from what we've done. They can also be very similar.
14 So it's not what we relied on.

15 Q Okay. So if there was some strange outlier in
16 a particular building that didn't seem to be
17 equivalent to what was happening with the rest of the
18 units in that building, you would have no way of
19 flagging that to validate it against when you were
20 doing your own assessments? Is that a correct
21 statement?

22 A Yes.

23 Q Okay. All right. Another question, during
24 your testimony on June 19, you discussed the need to
25 change several property appraisals, and I'm thinking

1 specifically of United Way because of constraints on
2 the property. My question is: When you were looking
3 at condos and residential condos, did you look at
4 constraints that might be in the condo association
5 agreements that would restrict the condos from being
6 used as a short-term Airbnb rental, for instance,
7 and/or bought by a corporation then wanting to use it
8 for rotating executives into the area occasionally?
9 Did you look at any of those kinds of covenants on the
10 condo valuations?

11 A Yes, I believe most of the covenants, if not
12 all of the covenants, were reviewed for -- for each of
13 the comparable projects.

14 Q Okay. So in your professional opinion, would
15 a limit on an ability to have Airbnbs and such drive a
16 different kind of market valuation when a market is
17 being characterized by increased tourism and that's
18 the purpose, of course, here is that there's increased
19 tourism?

20 A Yeah. It -- it may. It was really difficult
21 to quantify that. I mean, the -- the market with the
22 Airbnb type of elements isn't -- it isn't really far
23 enough along or definable enough for us to use like an
24 income approach in valuing the -- the -- the specific
25 condominiums. So we recognize that that's an amenity

1 condo unit owners can have if they can utilize that in
2 the market, but there's really no -- not enough
3 available information for us to do an income type of
4 approach on the individual condominium units.

5 Q Okay. And so where would we see that the
6 condo association constraints would be reflected in
7 your backup data for your appraisals?

8 A Yeah, they -- and, again, I would refer to
9 staff, but they were read. Whether they were put into
10 our server or not, as I -- as I sit here, I'm not
11 aware of that.

12 Q Okay. Thank you. Okay. And I want to --
13 Exhibit 233. Okay. I'm now putting up
14 Exhibit CWF 233, Number 1. This is the study of
15 physical impacts that we've reviewed previously. Can
16 you see that well?

17 A Yes. Thank you.

18 Q Okay. Now, you've testified previously that
19 residential condo owners would receive a special
20 benefit from the LID projects due to their proximity
21 that would be greater than the general public benefit
22 which cannot be measured.

23 Does a prediction that adjacent property
24 owners would make zero net new visits to the park call
25 your assumption into question?

1 A We didn't really look at the HR&A study in any
2 relation to the condominium residential aspect of the
3 project. It was mainly utilized for the commercial
4 properties. And -- and so for the residential
5 properties, as been discussed numerous times, we
6 relied on other studies primarily for that as our
7 basis.

8 Q Okay. So in this study it also indicated that
9 other city residents would increase their visits by
10 8 percent, and people in the greater metro area would
11 increase their visits by 37 percent. Now, they didn't
12 do an analysis of people coming from the larger Puget
13 Sound region, but could this data actually demonstrate
14 that there is a differential that provides a special
15 benefit to these other users that wouldn't be there if
16 there were no waterfront LID project?

17 A Well, the special benefit by definition is the
18 measurable difference in market value before and after
19 the amenities of the project, so if I go outside of
20 the recommended boundary that I have, I'm not -- I'm
21 not seeing a measurable -- measurable difference. It
22 would be more general in nature rather than special.

23 Q Okay. So you're -- you're saying that even
24 though other properties in the region might see a
25 value lift because they now have access to a much

1 better facility for recreation that because they're
2 outside of the boundaries their special benefit
3 wouldn't be considered?

4 A Well, a general benefit is the benefit to the
5 public at large, and that's how I would describe that.

6 Q Okay. So the general benefit -- if we look at
7 the city residents of 8 percent and metro residents of
8 37 percent and average those out, they would be
9 somewhere in between that number. So the general
10 benefit would be -- for access, for instance, would be
11 significantly higher than it would be for downtown
12 residents for the -- for the improved access that we
13 talked about to a park facility which is in your
14 valuation when you're looking at the market.

15 So did you then discount that aspect of your
16 valuation to account for the fact that, in fact, it
17 would not entice people to visit more often to the
18 waterfront who live adjacent to it than it would bring
19 in other people from outside?

20 A I'm just purely looking at what I see as
21 measurable market value difference within the LID
22 boundary area.

23 Q Okay. So if something is really a general
24 benefit, which is the existence of this new park in
25 the case of the residents that were nearby, you gave

1 them a special benefit even though it's actually a
2 general benefit to the entire region? Would that be
3 an accurate statement?

4 A No. The properties -- I'm only measuring
5 special benefit, and that's been clearly discussed and
6 defined in my report so --

7 Q Okay. Let's move on.

8 HEARING EXAMINER VANCIL: Ms. Gielen.
9 Ms. Gielen.

10 MS. GIELEN: Yes.

11 HEARING EXAMINER VANCIL: I want to
12 check on time with you. How much more time do you
13 anticipate for this witness?

14 MS. GIELEN: I don't know how much time
15 I've had so far, but I don't think it's very long.
16 And I asked for 20 minutes originally.

17 HEARING EXAMINER VANCIL: I'm just
18 asking how much more time you anticipate to
19 cross-examine this witness.

20 MS. GIELEN: Fifteen minutes.

21 HEARING EXAMINER VANCIL: Okay. We'll
22 continue. It's the noon hour, so we frequently take
23 lunch at this time, but we'll continue through when
24 you finish.

25 MS. GIELEN: Oh, okay. I will try to

1 keep it moving.

2 BY MS. GIELEN:

3 Q Let's see. Now I want to go to -- that's not
4 it. I'm sorry. I'm having a hard time reading my
5 screen here.

6 All right. Can you see what I'm sharing on my
7 screen right now?

8 A Yes.

9 Q Okay. So this is the report of the Hearing
10 Examiner that we discussed earlier with Mr. Foster.
11 And I asked him if he had provided it to you -- or the
12 results of this to you for your use in converting from
13 the preliminary to the final. Did you, in fact,
14 receive a copy of this report?

15 A I don't know if I received it or -- I know I
16 looked it up and -- and -- and have read through it.
17 But it's -- it's been some time now.

18 Q Okay. So if you had seen anything in the
19 report that would challenge the assumptions you made,
20 would you have changed your study as a result?

21 A I guess I would need you to rephrase that or
22 I'm not clear what exactly you're saying.

23 Q Okay. If there was some comment or written
24 comment or oral comment brought in that said I believe
25 that my unit is improperly assessed or given a value

1 because of these reasons, would you have gone back on
2 each of those and looked at the study to see if, in
3 fact, that person was making a comment that had
4 validity, or did you just look at them and not do any
5 action on them?

6 A Yeah, I believe we did look -- look at the
7 comments and tried to reflect those in our analysis as
8 much as possible.

9 Q Okay. Were you aware that of the comments
10 that were brought in, there were four written comments
11 in support -- for support of the LID and 122 written
12 negative comments and 68 oral negative comments?

13 A That -- that would be typical of other LIDs
14 that I've done. We very seldom have people come out
15 of the woodwork and pat us on the back.

16 Q Okay. All right. I don't know how many
17 people, or condo owners specifically, that you had
18 that came to you specifically with challenges to your
19 appraisals in the -- after the preliminary or prior to
20 the formation, but we had over 4,000 individual
21 properties. Doing assessments of 4,000 individual
22 properties, would you anticipate that very few
23 property owners would disagree with your appraisal?

24 A Again, I mean, that's the purpose of the
25 hearing is for those -- those property owners that

1 disagree with what we did to come forth with evidence
2 to refute what we did. So it's -- it's typical in
3 LIDs for people to disagree with the valuation
4 conclusions that I've done.

5 Q Okay. I'm -- I'm asking between the LID
6 formation when the -- and then the final special
7 benefit roll, between those two times, would you
8 expect that you would receive a significant number of
9 challenges to your appraisals from 4,000 and some odd
10 property owners in a normal sense or normal context?

11 A Well, in a normal context, typically, yes,
12 we -- we -- we have a certain percentage of property
13 owners that disagree or have issues with the project
14 or with my work or things of that nature.

15 Q And did you experience that with this LID?

16 A Well, I mean, obviously, yes, there were --
17 there were, I think, 440 protest letters or objections
18 out of 6,200 properties, so about 7 percent of the LID
19 participants protested.

20 Q Okay. A protest is different than actually
21 challenging the appraisal. That was protesting the
22 formation of the LID and was strictly just a one-page
23 letter that said I protest.

24 Did you have a number of people that came to
25 you with actual specific actionable challenges?

1 A Are you talking about the formation of the
2 LID?

3 Q I'm talking between the formation and the
4 issuance of the final value assessment.

5 A We did not get a lot of feedback from property
6 owners in between the -- the start -- the start of our
7 final to the -- to the completion of our final. We
8 did not get a lot of feedback from property owners.

9 Q And in your previous testimony, you said that
10 if you were in a normal appraisal process you would
11 normally have input and give and take with your
12 customer and the property owner to come up with your
13 value of your appraisal; is that correct?

14 A That's correct, yes.

15 Q Okay. So the fact that -- in your
16 professional opinion, is the fact that over 4,000
17 condo appraisals you had probably only a handful or
18 even less of actual back and forth with those owners
19 on their appraisals? Would you -- in your
20 professional opinion, would you say that was a red
21 flag that maybe you were not having the opportunity to
22 get that input and that back and forth conversation?

23 A Well, any -- any information that property
24 owners had had to go through the City. I'm not
25 involved and ordered to remain impartial. I'm not

1 contacted directly, and then I can't contact directly.

2 Q Okay.

3 A So anybody needs to go through the City to
4 provide me information, then that's how it was set up.

5 Q So in this paragraph that we looked at
6 previously from the Hearing Examiner's report where it
7 says that the property owners are not allowed to bring
8 up issues relative to their assessment, their
9 individual assessment, however special assessments,
10 whether as to their validity or amount can only be
11 raised at the subsequent hearing on the assessment
12 roll, that would imply that if they had to go through
13 the City that, in fact, there was no mechanism for
14 them to go through the City. Would that --

15 A I believe -- I believe -- I believe there was.
16 I believe the City had a -- had a website set up that
17 you could go through. But what -- what's being said
18 there is that the purpose of the formation hearing at
19 that time is not to object to your individual
20 assessment. It doesn't --

21 Q I understand that.

22 A Yeah, it doesn't mean you can't provide
23 information to the City relative to information on
24 your property that you want considered from that point
25 to the final. It doesn't mean that.

1 Q Okay. That's interesting. I -- I guess being
2 one of those property owners, I never received any
3 such communication or such, but we'll leave that.

4 Done with that. Next, I would like to move to
5 the addenda if I can find it. I see it up here.

6 Okay. If I can find the right page, I'm looking for
7 the -- I apologize for my slow response. I think I
8 might have gone too far. It's hard to do this when
9 you're in a Zoom meeting. I'm looking for page 31. I
10 swear my computer is eating exhibits that I had open.
11 I'll try again. I'm sorry. Okay. Okay. I had it
12 open all the time.

13 Okay. As we've described before, this is a
14 picture looking north from the ferry terminal to -- of
15 the Promenade, and one of the things that describes
16 the Promenade as differing from just a regular
17 streetscape is continuous public open space extending
18 along the west side of Alaskan Way from King to Pine
19 Street. And you've also listed -- listed it as one of
20 the things you evaluated in your -- your after the LID
21 appraisal the advantage of having additional open
22 space.

23 Can you tell me how you would define this --
24 this rendering of the pre-LID condition as compared
25 to, if I can get to it, the post-LID condition in

1 terms of open space?

2 A Yeah, again, as I've testified before, it's
3 hard when you're looking at an aerial in this angle to
4 really see all the amenities that are -- that are
5 under the trees.

6 Q I'm not talking about amenities. I'm asking
7 specifically on open space.

8 A Yeah. Well, you can -- you can see the --
9 instead of the vehicle access area that comes down,
10 it's all open space for -- for walking, and then there
11 are bike trails and whatnot that are under the canopy
12 of the trees that are kind of hard to see in that --
13 in that particular area.

14 Q Okay. So you're describing open space as
15 sidewalks and not, in fact, the expanse of a view and
16 the ability to -- to look over a broad area; is that
17 correct?

18 A Well, the -- the -- the waterfront in the
19 before is that, obviously, the improvements are there
20 and they're there in the after. So we're just looking
21 at that -- that difference that the market would
22 reflect.

23 Q I guess what I'm asking is: Your definition
24 of open space is not really that you have a broad open
25 area where you can see things like the water and the

1 mountains but instead more planting?

2 A Well, in the picture you show, there's --
3 there's open space in the sense of walking corridors
4 and bike lanes and things of that nature that provide
5 a different amenity than they do in the before.
6 You're not showing, obviously, like the Overlook Walk
7 which has, I think, a huge area of open space that
8 will really capture the views and, you know, better --
9 better access to the waterfront airline.

10 Q Okay. So let me ask the question a different
11 way. Given the fact that there are bike lanes in the
12 before and the after, so that amenity is already
13 there, and the fact that like the Overlook Walk which
14 is, basically, a large cement structure, this is a
15 bunch of walkway and paving, etc. Where is the
16 additional open space that didn't exist before? In
17 the Overlook Walk, you've created a broad concrete
18 plaza. Here it's already there. So I'm looking only
19 at open space, not parklike amenities.

20 A If you could go back to the -- the after photo
21 there.

22 Q Okay.

23 A Are you referring to open space in the before?
24 What -- am I -- I don't want to misrepresent your
25 question.

1 Q Well, I see the same space in terms of -- I
2 mean, there's a little bit less pedestrian area here
3 although those parking areas could also be used by
4 bicycles and pedestrians. I see broader and more
5 expansive views of the water and the mountains than in
6 the after and, in fact, broad enough and significant
7 enough use to attract millions of visitors each year
8 as compared to the after. So I'm asking you: What is
9 the advantage of added open space in the context of
10 Alaskan Way?

11 A Well, I just think it has been described
12 clearly in the addenda that you can -- you can see the
13 pedestrian corridor on the left that is -- that is
14 open walking space that's free -- free of traffic.

15 Q Okay. So the after -- the before condition
16 doesn't include a walking space that's free of traffic
17 that's continuous?

18 A Sure. And I've recognized that throughout the
19 report that there's a viable waterfront in the before
20 condition.

21 Q Okay. All right. Thank you.

22 A That's why the -- yeah.

23 Q Okay. I'll move on. Another question, I
24 guess, would be in terms of proximity and access to
25 the LID improvements. A building that is located on

1 the waterfront should not actually see an improvement
2 in access because they already have access to the
3 waterfront; is that correct?

4 A That would be correct. Both in the before and
5 after they would be on Alaskan Way and have access to
6 the waterfront.

7 Q So their proportionate increase should not be
8 as great as somebody -- as some building that is --
9 normally does not have a direct access to the
10 waterfront and gains improved access; is that correct?

11 A Well, again, what we've seen in the market
12 that properties that are closer or right on Alaskan
13 Way are -- investors will typically pay -- pay more
14 for the property. The Maritime Building you're
15 looking at right there sold for \$888 a square foot
16 which is a -- you know, it was a considerably large
17 amount.

18 And in confirming the sale with the investors,
19 part of the reason for that large amount of sale was
20 because they knew the LID was formed. And there was
21 consideration given to the amenities that the
22 Waterfront Seattle program was going to reflect into
23 their revenue stream and was consideration on why they
24 paid more for the property than anything else that had
25 been seen along the waterfront.

1 Q That makes a lot of sense for a commercial
2 property that could potentially offer sidewalk cafes
3 and retail and a major tourist corridor. But how does
4 that affect the 22 percent of the Waterfront Place
5 building, for instance, in terms of the lift of value
6 of those condominium units? They cannot charge more
7 for cafes or pedestrians or anything like that. So
8 are these apples and oranges actually when you're
9 talking in regards to access to the waterfront?

10 A Well, again, we're -- we're looking then at
11 different studies and the condominiums react
12 differently in the market than say this commercial
13 building as you mentioned. So, again -- it would be
14 how they would be -- how the value would differ from
15 before and after.

16 Q So you -- would you expect that a condo in
17 this situation would actually have less market impact
18 of being adjacent than a retail establishment that
19 gets to take advantage of a significant increase in
20 foot traffic and visitors?

21 A Well, what we've seen, obviously, from various
22 studies we've looked at that the proximity to
23 amenities like the Waterfront program is doing
24 increase the value for residential property. And
25 it -- it's very, very clear and well documented when

1 you look at the different studies. So they're
2 different market forces at work, for sure, but the
3 market perception of value is -- is certainly there.

4 Q Okay. So, for instance, you're talking about
5 things like the Crompton study on -- on residential
6 approximation to parks; is that correct?

7 A Yeah, Crompton and the other studies that we
8 looked at that are -- that are in our files.

9 Q Okay. Now I'm looking -- I pulled up
10 Exhibit C-31 which is a letter from Dr. Crompton. And
11 let me draw your attention to page 1. And my
12 highlighting is not showing. You -- it indicates that
13 for a heavily used park proximate value increment may
14 be minimal on abutting properties.

15 Do you have a disagreement with that comment?

16 A Well, I'm not sure what he -- he indicates
17 by -- by minimal. I mean, the percentage change that
18 we're seeing is -- is -- is fairly small. I think the
19 highest percentage change we have is 3 percent for the
20 condominiums. So, yeah --

21 Q So, again, in comparing a property abutting
22 the park versus one that's blocks away, you would
23 expect to see very little difference in the percentage
24 of value lift based on that proximate vicinity?

25 A Yeah. I think that's -- that's been shown in

1 our report. You'd look at Waterfront Landings, I
2 think we're around 3 percent increase, and then you go
3 back a block or two, I think we're 2 and a half to --
4 2 to 2 and a half percent or whatever. So --

5 Q So that would seem to dispute this line that
6 says if you're right on a very active facility that it
7 doesn't give you any value lift?

8 A Well, we -- we came up with -- what we came up
9 with, not only looking at Crompton, but other studies
10 too, so we're looking at other large urban area
11 markets. He's looking at more residential type --
12 type of -- of comparisons.

13 Q Wouldn't you actually characterize his
14 comments as applying to your application of his
15 studies to an inappropriate type of park for those --

16 A I've never -- I've never talked to the
17 gentleman, and he -- he was critiquing what -- what --
18 what we did, obviously. So he never contacted us to
19 know to which context we were using his study for.

20 Q Okay. Let's move to page 2. On page 2 he
21 says that the Promenade is best characterized as a
22 parkway and appears to be designed as an attractive
23 port to facilitate exercise and exposure to ambient
24 water views. Does that make sense to you?

25 A That wouldn't be an unreasonable description

1 of it, no.

2 Q You don't think that's a reasonable
3 description?

4 A I said it wouldn't be an unreasonable.

5 Q Okay. Thank you. Okay. And then he further
6 goes on to say that -- I'm not sure what page I'm on
7 now. Page 5 I need to get to. Most of the enhanced
8 value of parks derives from people's willingness to
9 pay a premium to be proximate to the tranquility,
10 peace, and psychological relaxation many parks
11 provide.

12 In contrast, enhanced property values
13 associated with greenways are likely to come from
14 access to a trail rather than from the views of nature
15 and open space and is their functionality or activity
16 potential that is likely to confer most added value.

17 Would you say that the value to the adjacent
18 properties here is more from a tranquil, peaceful
19 access to a view or from the access to the activity of
20 being able to use a trail or something?

21 A No. Obviously, again, we used Dr. Crompton's
22 study as background information. His comparisons are
23 different to a large degree from -- from what we're
24 doing. That's why we didn't solely rely on it as an
25 indicator of the value difference.

1 Q Okay. So you discounted the fact that he has
2 done numerous studies that would indicate that people
3 are willing to pay more of a premium for a peaceful,
4 tranquil -- tranquil park adjacent to their property,
5 and then as he goes down further, that enhanced
6 property values associated with greenways are likely
7 to come from access to a trail rather than from views
8 of nature, open space, and that there's no evidence to
9 suggest that they have a positive impact, so no
10 proximate premium is recommended? You're saying that
11 that's not appropriately the case here?

12 A I'm just saying that we're -- we're comparing
13 what Dr. Crompton has done in relation to what
14 we're -- we're recognizing, yes, there are differences
15 there from what -- how he is looking at it and what
16 is -- what is the LID project amenities.

17 Q And do you have studies that you could site
18 that would explain why his studies are incorrect?

19 A I'm not saying they're incorrect. They're --
20 they're -- they're different than what -- what is
21 being done in the LID projects. So, again, they're
22 used as background basis.

23 Q Okay. So his -- his suggestion that people
24 don't pay a premium and specifically for condos along
25 the waterfront who already have a drop-dead view would

1 not pay a premium for access to a very heavily used
2 trail; you would think that was wrong?

3 A All the studies we -- we looked at of other
4 urban areas, you know, Vancouver and the proximity to
5 Stanley Park to Coal Harbour, as you move the people
6 closest to the parks have the highest market value
7 difference increase, and that lessened as you moved
8 further back.

9 So in other examples we looked at in other
10 larger areas like Boston, Chicago, New York, you
11 saw -- we relied on -- the condominiums that were
12 closest to those amenities typically reflected higher
13 value differences than those further back.

14 Q And were those parks that you're speaking of
15 there a 5- to 7-lane highway with green space along
16 them?

17 A Well, again, yeah, there are differences. I
18 mean, you know, Boston certainly has -- has arterial
19 lanes going -- going through it but --

20 Q But is there actually park space there is what
21 I'm asking?

22 A Yeah. There's open space, park space.
23 Obviously, there are differences between those
24 elements and what -- and what the subject property
25 project is doing.

1 Q Okay. All right. Thank you.

2 Okay. You also indicated that your valuation
3 study has increased pedestrian accessibility to the
4 waterfront and greatly improved views.

5 In your appraisal of condos already having a
6 spectacular water view which abut the Promenade, was
7 that discounted in your appraisal because it's already
8 there in the before LID condition?

9 A Yes. We would have looked at -- at each condo
10 if it had a view, if it had a view in the before and
11 it had just a similar view in the after.

12 Q Right. But I'm asking if -- if having --
13 let's see. I've got to find the page but that your --
14 your assessment of improvement was because of
15 increased ability to access a view and have access to
16 the park. But these properties already have that, so
17 that would not be part of the value lift of those
18 properties; is that correct?

19 A Well, I think mainly what we're saying is
20 that, you know, an amenity like the Overlook Walk is
21 going to allow enhanced views -- views of the area.
22 So anything that has -- has a view what's the market
23 going to pay differently for the difference between
24 this project and their -- their condo. So we're
25 looking at project elements versus a condominium that

1 has a view. So we're referring there more to the
2 project elements.

3 Q So if you have a building, say, with some
4 units with a view of the water and other ones without,
5 you would give them all the same lift for on the basis
6 of having a more expansive view potential and not give
7 the ones that had no view previously an advantage
8 because now they are adjacent to a better view that
9 they can go get?

10 A When we're looking at a -- at a -- at a
11 condominium property, it's similar in a lot of
12 respects to how we're looking at a commercial
13 property. You have an economic entity that is
14 comprised of a building, and that building has -- has
15 fractional -- fractional ownership interest. And so
16 we're looking at that building in the -- in the before
17 and the after and is there -- is there a market value
18 difference. We're saying, you know, yes, there is due
19 to -- due to these various elements we've talked
20 about.

21 So if there are then -- so the value
22 difference is relatively similar from we bracketed it
23 and said, well, the market value difference between
24 the location of this property from the before and the
25 after is going to be relatively similar for the

1 fractional -- for that building like a commercial
2 building, but this building is comprised of fractional
3 ownerships.

4 So within the context of those fractional
5 ownerships, there's varying degrees of value change,
6 and that is reflected in our study. And so a property
7 that has more benefit from the enhancement of the LID
8 will pay a slightly higher assessment amount than
9 those that perhaps don't. And so that's clearly
10 reflected in our report.

11 Q And so that would imply that within a building
12 there would be different percentages of value lift
13 from one unit to another considering the fact that
14 each one is an individual property and they cannot be
15 all considered as one property because of they're not?

16 A The economic entity that they're -- they're
17 comprised of is the same -- we're looking at it as the
18 same in the before and after, but individual units
19 obviously within the context of that property have --
20 within that building have different value differences.

21 Q So you're saying that you considered when you
22 were looking at the condos that like a building where
23 maybe only part of it has a view or something that all
24 of the building benefits equally, you treated condos
25 as if they were all one building for that purpose?

1 A No. We obviously -- they're comprised --
2 they're comprised of one economic entity, but there
3 are fractional ownerships within that net entity.

4 Q I don't think that is the way a condo is
5 described in Seattle. I believe we are not fractional
6 owners. We actually -- we're not a -- we're not a
7 co-op.

8 A Yeah. Perhaps that's the wrong -- the wrong
9 phrase. But you're -- you share ownership interest.

10 Q Okay. So another resident -- one residence
11 would pay to provide the value lift to another
12 residence even though they did not receive the same
13 value lift is what you're saying because they're all
14 in the same building?

15 A We're just -- I'm just saying that there are
16 different values for the different condominium
17 elements within the building, yes.

18 Q Okay. But they're all applied the same
19 percentage?

20 HEARING EXAMINER VANCIL: Ms. Gielen, I
21 just want to check with you on time. We're at about
22 45 minutes.

23 MS. GIELEN: Okay. I'm sorry. I have
24 a bit more to cover. Can we break and come back?

25 HEARING EXAMINER VANCIL: How much more

1 time for this witness? I would like to wrap up before
2 we go to lunch with this witness.

3 MS. GIELEN: Okay. I -- I will try to
4 hurry. I will stop being so busy.

5 BY MS. GIELEN:

6 Q Okay. I'd like to go to page 11 and try to
7 make this quicker. Okay. Page 11 talks about the
8 negative impacts which actually provide a disamenity.
9 And one of those is parking and that could affect
10 residential properties.

11 And in previous testimony and previous
12 exhibits, we noted that 377 parking spaces under the
13 viaduct and 15 on-street parking spaces would be lost.
14 In your testimony in -- on the other day, you
15 indicated that the disamenity of reduced parking would
16 have been included in your analysis spreadsheet on a
17 parcel-by-parcel basis, but that generally it would be
18 positively offset by an increase in foot traffic.

19 And my question to you is: Is this the same
20 calculation you applied to a residential situation, or
21 was this just applied to commercial buildings?

22 A The main loss of parking was along the
23 waterfront, so from the information we were provided,
24 there were about 100 -- 100-plus parking -- parking
25 loss as a result of the project, and they were

1 primarily impacting the waterfront properties.

2 Q Okay. Did they apply -- in your analysis, did
3 you apply this to just commercial buildings, or did
4 you also apply it to residential condominiums?

5 A They're primarily applied to the commercial
6 properties. We felt that the market would be reacting
7 more towards them than the commercial properties given
8 the location of the parking lots.

9 Q Okay. So since residential property owners
10 received no benefit from increased pedestrian traffic,
11 did you consider the loss of parking in terms of
12 having a competition for available parking spots in
13 the market?

14 A Again, we felt it was -- the market would look
15 at it more from the commercial property difference
16 rather than residential given the location of parking
17 lots.

18 Q All right. So you did not evaluate or
19 consider any parking lots for residents who would have
20 less availability of parking for their guests or
21 service people when you made your analysis? You're
22 saying you did not include that in your study?

23 A It wasn't a significant factor that we saw for
24 the residential property owners.

25 Q Did you actually analyze it?

1 A On a parcel-by-parcel basis relative to the
2 properties we felt were most impacted by it, yes.

3 Q And which properties do you think were most
4 impacted in terms of the residential condominiums?

5 A Well, as I said, it was mainly dealing with
6 commercial properties so we didn't --

7 Q I'm asking you in terms of residential
8 condominiums, did you, in fact, do an analysis of loss
9 of parking from Alaskan Way to the adjacent
10 condominiums who would no longer have a place for
11 visitors to easily park or service people?

12 A And due to the location of where the parking
13 was, we didn't do a separate -- it was done on a
14 parcel-by-parcel basis. We didn't see an impact in
15 the -- the residential properties.

16 Q Okay. So you did not see any -- you did not
17 include any impact from that in your study is what
18 you're saying; is that correct?

19 A Not that I recall.

20 Q Okay. Again, there's another one of the
21 disamenities listed was litter, vandalism, intrusive
22 lighting, and groups engaging in morally offensive
23 activities. In your testimony you said that these
24 disamenities would really be resolved by the LID
25 management plan and that keep the area clean, well

1 maintained, and patrolled.

2 Since the management plan only pertains to the
3 actual Promenade and adjacent park areas, did you
4 consider these negative impacts for properties on the
5 sidestreets in Western Avenue which would not be
6 included in that management plan?

7 A Yes. I mean, they would -- they would be the
8 same both in the before and after if they didn't -- if
9 they weren't part of this management plan.

10 Q Okay. Did you consider that negative
11 behaviors and activities disallowed in the park would
12 likely move to the adjacent sidestreets and Western
13 Avenue?

14 A No. Again, we -- there -- there -- those
15 elements are there in the before and the after.
16 Whether they would be enhanced for some reason like
17 you said, that was not a consideration.

18 Q Have you looked at Western Avenue along
19 Alaskan Way where the residential condos are currently
20 located to determine that, in fact, there is a problem
21 with this?

22 A Yeah, again -- yes, and, again, that would be
23 the same both in the before and after.

24 Q And you -- you saw that there is no such issue
25 at this point in time?

1 A No. I agree there's an issue. The issue of
2 those elements is the same in the --

3 Q Okay. So you're assuming that having a major
4 regional park on the street adjacent would not change
5 any activities on Western Avenue?

6 A Yeah. There's -- there's nothing that we saw
7 that would reflect a change in that.

8 Q I guess I'm asking you if you understand that
9 Western Avenue right now does not have problems with
10 vandalism, intrusive lighting, and groups engaging in
11 morally offensive activities? In fact, there's almost
12 no foot traffic at all.

13 MR. FILIPINI: I'll object. It's
14 assuming facts not in evidence in the record.

15 Q Okay. All right. So, hypothetically, if a
16 street were next to -- you know, one block over from a
17 park and the street was no long -- was already -- was
18 a quiet residential street, a new park that was going
19 to attract additional 1.5 million people goes in on
20 the subsequent block, would you anticipate that that
21 quiet residential street would have no difference in
22 terms of nuisance visits?

23 A Well, I think it would have more foot traffic
24 more likely, yes. Whether that would be a nuisance or
25 not, I've never seen any study relative to that.

1 Q Okay. Are you aware that there are different
2 protocols for how antisocial behavior can be legally
3 implemented on a designated park versus what can be
4 implemented on a city street in Seattle?

5 A Generally in relation to that operations and
6 management agreement.

7 Q Okay. This is exclusive of that agreement?

8 A Well, it would be the same in the before and
9 after as far as any -- any control of that goes.

10 Q Well, no, the park would be different after
11 because it would be able to be enforced for
12 inebriation, camping, and antisocial behavior. The
13 street would not be able to be enforced for those
14 things.

15 A Yeah.

16 Q I'm asking you if there's an increase in
17 people on the park who cannot do things that were not
18 allowed by a park but cannot be kept from doing those
19 things on a street that's one block off, would your
20 professional opinion say that that wouldn't happen?

21 A All I'm saying is that in the before and after
22 that the street is going to be patrolled the same if
23 it is not part of the operations and management
24 agreement of the park.

25 Q Okay. All right. Thank you. And then we

1 look at litter, vandalism, and -- oh, excuse me. I
2 guess I've already got that one.

3 Okay. You also testified that the -- when the
4 protest waiver agreement was signed which resulted in
5 the abatement ordinance that it gave a real indication
6 of the positive feeling about the market potential in
7 the properties in the LID area; is that correct?

8 A Yes.

9 Q Okay. Are you aware that there were about 100
10 individual property owners that signed that agreement
11 that together had enough value of property that the
12 other 6,100 property owners could not possibly get
13 enough signage together to outweigh them in signing
14 that agreement?

15 A Yeah. I -- I understand it was a significant
16 portion of the downtown core that, as you say, are the
17 property owners or so.

18 Q Okay. So would that give you an indication in
19 your professional opinion that the some 6,100 property
20 owners that did not sign that agreement felt that this
21 was a good market impact to them?

22 A Well, obviously, they've had -- you've had
23 your chance to raise your concerns through this
24 hearing process, and that's what this hearing process
25 is for.

1 Q I'm talking about the LID formation. You
2 indicated the LID formation was kind of like by a
3 claim believed to be a good market lift.

4 A Well, I'm just saying that -- that agreement
5 provides an indication that -- that significant
6 investors in the market looked at this as a favorable
7 amenity.

8 Q Okay. Would you believe that that would then
9 imply that investors in residential homes would
10 believe that it's a significant amenity to their
11 property value because they didn't -- there was
12 none -- hardly any of them had signed it? Would that
13 give you a different opinion?

14 A Well, no. I -- I'm just stating from the
15 commercial property standpoint --

16 Q You're saying that if the commercial
17 properties believe it's a good marketing thing that
18 that also applies to condos by definition?

19 A Again, you're talking about a formation
20 process so --

21 Q I'm asking you in your professional opinion as
22 an appraiser who has said that that gave you an
23 indication that your assessment of the market was
24 appropriate. And you've come back and said, yes, it
25 was appropriate. It showed it was appropriate for the

1 commercial market, but I don't see that you have
2 anything that indicates that the residential market
3 would see that as -- would validate your position as
4 an appraiser?

5 A I didn't see anything from the condominium
6 properties, no.

7 Q Okay. So the fact that they didn't sign it
8 was not an indication to you?

9 A It's just not something I considered. Again,
10 I was looking more at the commercial aspect with that
11 statement.

12 Q Okay. So would you say that the condo market
13 value and assessments were kind of a secondary thing
14 that you gave attention to in this whole study?

15 A No. I don't think they were secondary at all.

16 Q Okay. So even though you did a whole bunch of
17 analysis on various aspects of impacts and market and
18 favorability for commercial buildings, particularly
19 the big ones, but did not do the same thing for condos
20 does not imply that you were -- you treated them
21 differently or as second -- second class?

22 A No, I don't -- I don't think it applies that
23 at all.

24 MS. GIELEN: That's the end of my
25 questions.

1 HEARING EXAMINER VANCIL: Thank you,
2 Ms. Gielen.

3 I want to check with Mr. Stillwell and
4 Mr. Reuter on how much time you anticipate
5 cross-examining Mr. Lukens. Mr. Stillwell and
6 Mr. Reuter?

7 MR. STILLWELL: Yes, I anticipate 30 to
8 45 minutes. I realize we're running short on time, so
9 I can try to keep it closer to 30 minutes.

10 HEARING EXAMINER VANCIL: Mr. Reuter?

11 MR. REUTER: Yeah. Thank you, Your
12 Honor. I -- I may not have any questions. It depends
13 on how much ground Jake covers. I wouldn't think much
14 at all.

15 HEARING EXAMINER VANCIL: All right.
16 We'll see how that goes. It's 12:45 now. Given that
17 we don't have much to come back to, which I'm hoping
18 will be the case -- and, Mr. Macaulay, you're excused.
19 That's -- you're finally off the hook so --

20 MR. MACAULAY: Thank -- thank you,
21 Mr. Hearing Examiner.

22 MS. GIELEN: I'm sorry.

23 HEARING EXAMINER VANCIL: You're tired
24 of it. We're tired of it. We're tired of you. You
25 can go now.

1 MS. GIELEN: I did not get a chance to
2 introduce my exhibits.

3 HEARING EXAMINER VANCIL: Okay. We'll
4 take care of that in just a second again before we go.
5 And then let's -- let's just take a short lunch then.
6 We'll come back -- we're going to break and come back
7 at 1:30 so that we can finish up with Mr. Lukens after
8 that.

9 And then, Ms. Gielen, you had exhibits you
10 wanted to introduce?

11 MS. GIELEN: Yes, please. I would like
12 to introduce CWF 0176, Exhibits 2, 3 revised, and
13 Exhibit 4, and there was another exhibit that was my
14 exhibit was CWF 0176-1. I did not use it, but it was
15 used by Mr. Patton in his cross, so that should also
16 be introduced.

17 HEARING EXAMINER VANCIL: Was it
18 already introduced by Mr. Patton? It would have an
19 exhibit number if it was introduced by him. You can
20 cross-reference other people's exhibits for this part
21 of the hearing.

22 MS. GIELEN: I would have to ask did
23 Mr. Patton introduce that as an exhibit?

24 MR. PATTON: This is Will Patton. That
25 was an exhibit to our written submission on

1 January 28.

2 HEARING EXAMINER VANCIL: Okay. So it
3 is in the record.

4 MS. GIELEN: Thank you.

5 HEARING EXAMINER VANCIL: All right.
6 Any objections -- any objection to Exhibits 2, 3, or
7 4?

8 MR. FILIPINI: No objections.

9 HEARING EXAMINER VANCIL: Exhibits 2,
10 3, and 4 are admitted. We'll return at 1:30. Thank
11 you.

12 (CWF 0176 Exhibit 2, Exhibit 3, and
13 Exhibit 4 were admitted.)

14 (A luncheon recess was taken from
15 12:47 p.m. to 1:30 p.m.)

16 HEARING EXAMINER VANCIL: We return to
17 the record for cross of Mark Lukens starting with
18 Mr. Stillwell.

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

20 BY MR. STILLWELL:

21 Q Thank you. For the record, Jake Stillwell
22 from Perkins Coie on behalf of objectors in Case
23 Number CWF 0318 through 0441 and for the
24 cross-examination of Mr. Lukens.

25 Mr. Lukens, are you on?

1 A Yes. I'm here. Can you hear me?

2 Q I can. Thank you. Good afternoon,
3 Mr. Lukens. Thank you for coming back.

4 A Good afternoon.

5 HEARING EXAMINER VANCIL: And just a
6 reminder, Mr. Lukens, you remain under oath or
7 affirmation from your earlier appearance.

8 MR. LUKENS: Yes.

9 Q So for your -- to your understanding, what was
10 the before conclusion being evaluated by ABS? Was it
11 the current market value of the appraised properties
12 as of October 2019?

13 A I'm sorry. Could you say the first part of
14 the question again.

15 Q Sure. What was the understanding of the
16 before condition being evaluated by ABS?

17 A Yes. It was the current market value of the
18 properties as of October 1, 2019.

19 Q Okay. And I would like to share screen and
20 direct your attention to Exhibit C-17, which is the
21 special benefit study. Okay. Are you able to see
22 that?

23 A Yes.

24 Q And this is a page -- page 3 of that exhibit.
25 Could you please read here the -- the highlighted

1 sentence there at the bottom.

2 A Yes. A primary assumption of this study is
3 that in the before without LID scenario the Alaskan
4 Way viaduct has been removed and Alaskan Way is
5 rebuilt to WSDOT standards at street level.

6 Q Thank you. I will stop sharing. So based on
7 this language, is it your understanding that ABS began
8 the valuation by creating a hypothetical before
9 condition which included the WashDOT improvements
10 before they were actually completed?

11 A Could you pull that up one more time, the
12 exhibit.

13 Q Sure.

14 A Before without the -- yes.

15 Q Okay. And so is it then your understanding
16 that the assumed before value of the properties wasn't
17 necessarily their actual condition as of October 2019,
18 but it was their value assuming that these WashDOT
19 improvements had been completed; is that correct?

20 A Well, I think as of that date, the viaduct had
21 been removed. I'm not sure about the latter part of
22 that sentence because I'm not sure what the WashDOT
23 standards are.

24 Q Okay. Did the -- would you like me to leave
25 this up?

1 A No, no. That's fine.

2 Q Do you know -- or I'm sorry. Did Mr. Macaulay
3 or his team tell you what percentage lift they were
4 applying to the before value to go from their actual
5 October 2019 market value to this hypothetical
6 condition that included all of these conditions being
7 complete?

8 A All of which conditions?

9 Q These -- these WashDOT conditions. I
10 understand that -- I believe in October of 2019 at
11 least part, if not all, of the viaduct was down, but
12 there were a lot of improvements that were part of
13 that project. And I guess my question is: Did
14 Mr. Macaulay or his team tell you as part of their
15 review that they increased the percentage of the
16 before value to reflect these WashDOT improvements
17 having been completed?

18 A No.

19 Q Okay. So you're not aware of any sort of
20 percentage that had been calculated that added to the
21 before value based on the WashDOT improvements?

22 A No, I'm not aware of any.

23 Q Sorry. For sake of time, I'm getting to the
24 next relevant question. So -- and I just want to be
25 clear on this point. When you're looking at the

1 before value, did you study the conditions as they
2 were on the ground as of October 2019, or in your
3 analysis or in your review of ABS's analysis, did you
4 assume any improvements were there that were scheduled
5 to be completed but had not yet actually been
6 completed?

7 A No, not that I'm aware of.

8 Q Okay. Thank you. Switching gears, you used
9 the income approach primarily to value the hotels; is
10 that correct?

11 A Well, I didn't value the hotels. ABS did.
12 But, yeah, they relied on the income approach
13 primarily.

14 Q Okay. And are you familiar with the STAR
15 Trend reports?

16 A Yes.

17 Q Okay. Is that a reputable source of data?

18 A Yes.

19 Q Okay. Could you just briefly explain what the
20 STAR Trend report is?

21 A Well, there's different trend reports.
22 There's property-specific report that a particular
23 hotel owner or manager would get for their property
24 that shows how their property compares. They choose a
25 competitive set of anywhere typically three to five

1 properties or they may choose more than one
2 competitive set. But it basically gives them a
3 benchmark of how their property is performing versus
4 this composite, competitive set that they select. So
5 that's the property-specific one.

6 There's also a market -- well, there's --
7 there's a couple. You can get a trend report for an
8 entire market such as downtown Seattle or the Seattle
9 market, and you can also get a custom trend report
10 which is where you go and specify a certain number of
11 properties. I think it has to be at least four. I
12 don't know if there's an upper limit, but you can
13 specify certain hotels in the downtown Seattle market.

14 And you get a composite picture of occupancy,
15 ADR, for those properties. You don't get any
16 property-specific information. You just -- you get it
17 for this group of four-plus properties.

18 Q Okay. And did you rely on or do you know if
19 Mr. Macaulay relied on the property-specific STAR
20 Trend reports when conducting the special benefit
21 study?

22 A I understood that those were not available.

23 Q Okay. Did you ever recommend that
24 Mr. Macaulay obtain a STAR Trend report for the
25 special benefit study?

1 A Which STAR Trend report?

2 Q I'm sorry. The property-specific one for
3 the -- the properties that he was specifically
4 appraising?

5 A No. I was told that they weren't able to get
6 any property-specific information.

7 Q Okay. And let's see. How important in the
8 income approach is determining an accurate room rate?

9 A It's certainly one of the key variables along
10 with occupancy, expense margins, other income, those
11 kind of things.

12 Q Okay. Would you say that room rates are the
13 largest source of hotel revenue?

14 A Typically -- well, yeah, typically room
15 revenues are. I mean, there are occasions where food
16 and beverage exceeds room revenue, but typically room
17 revenues are, yes.

18 Q Okay. And what would happen to the overall
19 special benefit number if the room rate calculation or
20 one of the other major revenue sources calculations
21 were inaccurate?

22 A Well, there's a lot of variables involved.
23 You've got all of your income, and then you've got
24 your expenses. So an appraiser has to make
25 assumptions on all of those things, the occupancy, the

1 average rate, the other income, the expense margins
2 and so forth. So all of those things have an -- have
3 an impact on the bottom line and, therefore, the
4 value.

5 Q Okay. Thank you. I'm next going to share
6 screen with what's been offered as Exhibits 135, and
7 it's the -- the spreadsheet that Macaulay's team used
8 for the Hyatt at Olive 8. Does this look familiar to
9 you as one of Macaulay's -- Mr. Macaulay's
10 spreadsheets?

11 A I'm not seeing anything on the screen. I've
12 got a copy of it.

13 Q I'm sorry. I'm sorry. I -- I'm one click
14 short. There we go.

15 A Yes. This -- this appears to be the type of
16 spreadsheet that he used, if not the actual
17 spreadsheet.

18 Q Okay. And I'd like to direct your attention
19 over here, if you can see where my mouse is toggling,
20 to the high and the low numbers with respect to room
21 revenue and some of these other sources of revenue
22 that you were discussing.

23 A Yes.

24 Q What is your understanding of how the highs
25 and lows for these revenues were determined by the ABS

1 team?

2 A They took a certain percentage of the
3 different revenue sources. So it looks like in one
4 case the low was .45 percent different and the high
5 was .85 percent different.

6 Q And I guess my question is: Do you -- do you
7 have a sense of what was underlying those percentage
8 differences? I guess putting it another way, what
9 would cause the revenue estimate to be .45 percent
10 versus .85 percent? What sort of factors would make
11 that sort of a difference?

12 A It appears to be kind of a sensitivity
13 analysis, you know, based on slightly different
14 assumptions on revenues.

15 Q What kind of assumptions would those be?

16 A Changes in -- slight changes in room rates or
17 occupancies or slight changes in food and beverage
18 patronage. I mean, typically, a lot of the revenues
19 are driven off the room revenue, so a corresponding
20 change in the room revenue would -- well, particularly
21 if driven by occupancy, it would -- it would translate
22 to a change in the other revenues.

23 Q And were you able to review the data of the
24 ABS team that was underlying some of the different
25 revenue assumptions that went into creating this type

1 of spread?

2 A Sorry. Could you repeat that, please.

3 Q Sure. So in reviewing the work of the ABS
4 team, were you able to review the data that the ABS
5 team was relying on when it came to these -- this sort
6 of high and low spread of these revenue percentages?
7 Were you able to look at what the data was that they
8 were -- you know, these assumptions you're talking
9 about, were you able to review that -- that work of
10 the ABS team to see if this percentage spread was
11 reasonable in your view?

12 A No. I mean, it appears to be a very minor
13 change.

14 Q Did you ever -- we're looking at the -- at the
15 Hyatt at Olive 8 now, but for -- for other
16 spreadsheets, did you ever sort of find that the ABS
17 team's high and low percentages for revenue increases
18 were unreasonable, or did you ever disagree with their
19 conclusions?

20 A No.

21 Q Did you -- after reviewing this analysis by
22 the ABS team, did you ever provide any feedback to the
23 team or -- or sort of critiques on their work?

24 A Yes.

25 Q And what sort of -- what form did that

1 feedback take?

2 A Well, early on I provided some guidance on
3 just formatting the income and expense statements to
4 be more in line with uniform system of accounts for
5 hotels, which is kind of the standard for hotel
6 operating statements. So I provided guidance there.
7 I gave them some industry standards for different
8 expense margins, provided information on the Seattle
9 market conditions, those types of things.

10 Q Okay. At any time for this or any other
11 hotel, did you have access to the actual hotel data
12 underlying their -- their revenues?

13 A No.

14 Q And then scrolling down -- here, I know this
15 is sort of a large Excel spreadsheet. There's also a
16 spread of the -- the high and low spread of the -- of
17 the cap rate here. What -- can you, first, please
18 explain briefly what is a cap rate?

19 A Sure. A cap rate is basically the -- a
20 one-year return the buyer is looking for, so you
21 divide the net operating income by the cap rate to
22 drive value.

23 Q And do you have an understanding of the
24 factors that went into the ABS team having this spread
25 of the cap rate from 7.4 percent to 7.5 percent?

1 A No.

2 Q Do you recall ever disagreeing for any hotel
3 what the cap rate determined by the ABS team?

4 A I was really focused on the overall value and
5 the price per key. Like I said, I mean, you know,
6 there's so many variables that go into a hotel
7 valuation in terms of expenses, revenues, cap rates,
8 all those sorts of things. So I was really focused on
9 more the -- the concluded value and rather -- whether
10 or not that made sense on a price per key basis.

11 Q Okay. So and as with -- as with the revenue,
12 were you able to sort of see the underlying data that
13 the ABS team was -- was using to determine these cap
14 rates?

15 A No.

16 Q All right. And final question on this
17 spreadsheet here, moving over to the -- so they have
18 the four LID scenarios, each with their own special
19 benefit percentage change, total estimated value, etc.
20 And then at the bottom they've come to one with LID
21 conclusion.

22 Do you, in evaluating the ABS work, get a
23 sense of how the team went from these four scenarios
24 to the final determination? For example, were they
25 averaging these four scenarios to come to the final

1 determination, or what's your understanding of how
2 that process worked?

3 A I don't know exactly what they did to arrive
4 at the -- the concluded benefit.

5 Q Okay. In your scope of work, did you review
6 the reasonableness of the four scenarios or just the
7 final benefit -- I'm sorry. The final conclusions?

8 A Just the final conclusion.

9 Q Okay. And do you recall ever disagreeing with
10 the ABS's team's final conclusions?

11 A No. I mean, we made some adjustments along
12 the way to various assumptions, but I wouldn't -- you
13 know, we were doing more like fine tuning. I wouldn't
14 say I disagreed with them.

15 Q Okay. What did that reconciliation process
16 look like? Did you -- for example, were you provided
17 a draft of the spreadsheet and asked to comment and
18 provide feedback?

19 A Yes.

20 Q Okay. When you were providing the feedback,
21 was it -- did you ever suggest data inputs yourself,
22 or was it more general suggestions on things to
23 consider?

24 A More general suggestions.

25 Q All right. I will stop sharing that.

1 Switching briefly to the HR&A study -- and I don't
2 have it in front of me, and I'm not going to ask you
3 to comment on it specifically. But besides the HR&A
4 study and I believe you also testified that you had
5 spoken with hotel operators in the Boston and New York
6 markets, other than that, did you conduct any other
7 independent due diligence regarding increased tourism
8 and business travel would specifically benefit any of
9 the assessed hotels?

10 A Well, I mean, I've been involved in valuing
11 hotels for 30 years to -- to one degree or another.
12 So, I mean, I know that increased visitation to the
13 city is a good thing and generally leads to greater
14 hotel revenues.

15 Q And -- and so how did you -- how did -- how
16 did you either or did you see how the ABS team sort of
17 translated and quantified that general principle, that
18 I -- I don't think anyone would necessarily disagree
19 with that. But how was that translated into specific
20 percentage increases to specific hotels?

21 A Again, I didn't get involved in that in
22 detail, but I believe they look at -- looked at
23 proximity to certain improvements and applied ratios
24 based on -- or percentages based on proximity.

25 Q Okay. All right. Thank you. So I'm going to

1 bring up again the ABS -- the final benefit study.
2 I'll bring it up on my screen here. Again, this is
3 Exhibit C-17. One moment. All right. Do you see it
4 up there?

5 A Not yet, no.

6 Q I'm sorry.

7 A Okay.

8 Q The last page is still up there. Let's see
9 here. Okay. So I'm next going to turn to the -- the
10 list of general assumptions and limiting conditions in
11 the ABS study. Do you see this highlighted number 30
12 here?

13 A Yes.

14 Q Could you please read this? This is -- and I
15 guess for context, so this is a list of the general
16 assumptions and limiting conditions for the ABS study.
17 It starts on page 197, and we're down at, sorry,
18 limiting condition 30. If you wouldn't mind reading
19 that one for us?

20 A Sure. It says this appraisal applies to the
21 land and building improvements only. The value of
22 trade fixtures, furnishings, and other equipment or
23 subsurface rights, mineral, gas, and oil were not
24 considered in this appraisal unless specifically
25 stated to the contrary.

1 Q Okay. Thank you. Is it -- I'll stop sharing,
2 but if you would like to reference the report again,
3 please just let me know.

4 A Okay.

5 Q Is it your understanding that based on that
6 limiting condition ABS included personal property
7 within its hotel appraisals -- I'm sorry. I phrased
8 that confusingly.

9 Is it -- I believe you testified earlier that
10 ABS included personal property within its hotel
11 appraisals. And my question is: Is that your
12 understanding that personal property was included in
13 these appraisals notwithstanding this limiting
14 condition?

15 A Yes. Hotels almost always sell with the
16 personal property in place.

17 Q Do you recall from the special benefit study
18 or from your reviewing of the ABS work anything
19 indicating that for the hotel properties the
20 appraisals specifically stated that it was not just
21 appraising the land and building improvements but also
22 personal property? Was that ever explicitly stated in
23 any of the appraisals for the hotels?

24 A No. But it's typical practice to value it,
25 and then for USPAP purposes, you would break it out.

1 Q Were you aware of any other -- the -- the
2 limiting conditions -- and I won't ask you to go
3 through it in detail right now. But were you aware of
4 any other limiting conditions that weren't used in the
5 valuations?

6 A That weren't used? No.

7 Q Do you know if personal property was included
8 in the appraisals of other types of properties such as
9 offices or condos?

10 A I -- I assume not. I mean, that -- that was
11 probably like standard boilerplate that you often use
12 in -- from an appraisal to appraisal. So, but, yeah,
13 I mean, for -- for hotels they almost always sell with
14 personal property. But that wouldn't be typical for
15 an office building or a condominium.

16 Q Okay. Since this wasn't an appraisal for a
17 sale necessarily, though, does the inclusion of
18 personal property in some types of properties, in this
19 case hotels, but not others result in a
20 disproportionate assessment of hotels being valued
21 higher than, say, offices because you're including all
22 of that personal property?

23 A Well, you're comparing apples and oranges, a
24 hotel to an office building. Are you saying that the
25 value might be overstated?

1 Q Yeah. And so my question is: You know,
2 this -- I understand that the -- when valuing a hotel
3 for sale, you would usually include personal property.
4 But because this appraisal wasn't for a sale but it
5 was for, you know, the purposes of determining a
6 special benefit for the LID assessment, since that's
7 the purpose of this appraisal, would including
8 personal property in some of the properties, so hotels
9 but not others, such as offices and condos, wouldn't
10 that create an imbalance of value considering that all
11 these properties are being assessed for the same
12 purpose, which is to determine their LID assessment,
13 not necessarily a sale?

14 A No. I don't think so. I mean, an appraisal
15 does assume a sale, and a sale of a hotel would
16 typically include the FF&E.

17 Q Would -- would a city include personal
18 property in a LID appraisal but then not assess a
19 special benefit on that property? And I'll rephrase
20 it. That was a confusing way of saying it.

21 Since personal property, it sounds like, was
22 included in the hotel appraisals, is it your
23 understanding that the special benefit assessment is
24 then against not only the real property of the hotels
25 but also an assessment on the personal property?

1 A It's tough to answer that. I mean, again, a
2 hotel sells as -- as one entity. So, I mean, if
3 you're asking could that be broken out, I'm not really
4 sure what you're asking.

5 Q Well, I guess my question is: The purpose of
6 this appraisal was -- was not to -- to sell these
7 hotels, although I understand that that's the common
8 method here, but to assess value for the purposes of
9 determining what the special benefit is going to be
10 for these properties for these improvements.

11 And my question is: If that appraisal
12 includes all of this personal property, doesn't it
13 sort of logically lead to the fact that -- that the
14 LID assessment is then going to be against that
15 personal property as well in addition to just the real
16 estate?

17 A Yes. I mean, it -- it enhances the value of
18 the whole property.

19 Q Did you, in reviewing the ABS work, ever come
20 across data or analysis on how hotel personal
21 property, you know, for example, a desk or a TV, would
22 specially benefit from the LID improvements?

23 A No.

24 Q Thank you. All right. So switching gears,
25 moving along, I know I'm coming up on half an hour. I

1 want to talk a little bit about COVID-19. If -- if a
2 date of valuation precedes an unforeseen major
3 economic event like COVID-19 that impacts specifically
4 the type of properties being appraised, would that
5 render the appraisal stale?

6 A No.

7 Q Why not?

8 A Well, because the appraisal is effective as of
9 that particular date.

10 Q And --

11 A So, I mean, it wouldn't be -- I mean, it
12 wasn't stale as of that date. I mean, you always have
13 a date of value just kind of set up, a placeholder on
14 what people would look at as of that date.

15 Q And are you -- are you aware that the
16 Appraisal Institute has promulgated guidelines for
17 post -- post-COVID appraisals?

18 A Yes.

19 Q Have you done any hotel appraisals in downtown
20 Seattle since COVID-19?

21 A No, not in Seattle.

22 Q Do you think that those Appraisal Institute
23 guidelines would be relevant prior to the assessment
24 roll hearing being finalized?

25 A I'm not familiar with when the assessment roll

1 was finalized.

2 Q Sure. So the -- I understand that the
3 valuation date of the properties was previous. We're
4 using October 2019. But that was just the valuation
5 date. The -- the assessment rolls themselves on
6 finalizing the fact that these property owners are
7 going to receive an assessment, that hasn't been
8 finalized yet.

9 And so my question is: Because there was this
10 intervening economic event that's impacting these
11 types of properties being appraised, do you think that
12 would justify sort of a reappraisal before the -- the
13 final assessment rolls are finalized that takes into
14 account the Appraisal Institutes' post-COVID-19
15 guidelines?

16 A Well, you would have to change the date of
17 value.

18 Q In your opinion, is there -- is this a large
19 enough economic event that we should change the date
20 of value?

21 A I can't opine on that. I don't --

22 Q Okay. That's fine. A couple more questions.
23 Turning to another subject, so in your testimony you
24 indicated -- in your direct testimony earlier when you
25 were discussing your professional background, you

1 indicated that you've been involved in buying,
2 selling, and developing hotel assets in Seattle; is
3 that correct?

4 A Yes.

5 Q If you are -- if you're valuing land -- a land
6 development opportunity for development to be
7 completed, you know, in this case the example is in
8 2024, would you take into account the risks of having
9 to go through the entitlement and environmental review
10 process?

11 A Yes.

12 Q And as a developer, how would you go about
13 incorporating those risks into your valuation?

14 A Well, you would evaluate the risk, and then it
15 would show up in a discount rate.

16 Q Okay. And what is the -- what is the discount
17 rate? Are you -- I'm sorry. Are you referring to the
18 discounting to present value?

19 A Yes.

20 Q Could you briefly explain that concept?

21 A Yes. It's just taking future dollars and
22 discounting them back, you know, either -- well, the
23 time can vary but typically a ten-year DCF or a
24 five-year DCF. If you were doing a development
25 project, you would do it -- well, you could do it at

1 different periods but typically at completion.

2 Q Okay.

3 A And then you discount it back to the date of
4 value.

5 Q And why are you discounting to present value?
6 What sort of risks -- I know we were just talking
7 about entitlement and environmental review. What
8 types of risks go into that discounting value?

9 A Inflation, entitlement risk, various risks
10 that the -- the cash flows won't come to fruition.

11 Q Are there discounts for the period of
12 construction?

13 A Yes, I mean, depending if that's within the
14 period that you're doing your projections, yes.

15 Q Okay. So in -- so in this example, you know,
16 if we're looking five years down the road or four or
17 five years down the road and, you know, it's a
18 capital-intensive project, would a discount rate take
19 into account all of the construction that has to
20 happen during that time?

21 A Would the discount rate take -- yeah, I mean,
22 it would reflect the risk of that construction period.

23 Q Okay. Is it your understanding that the ABS
24 team discounted the -- their appraisal of -- of the
25 properties when evaluating the -- the after condition?

1 So I guess I'll rephrase so it's a little clearer.
2 When the -- when Mr. Macaulay and his team were
3 evaluating the future LID improvements, to your
4 knowledge, did they do a discount rate analysis?

5 A To my knowledge, I don't know. To my
6 knowledge, I don't have knowledge that they did that
7 or not.

8 Q Having your scope of work be that you are
9 evaluating these appraisals, if they had taken into
10 account these discounted rates, would you expect that
11 would be something you would have seen?

12 A I mean, not -- not necessarily, no.

13 Q So in -- in -- in evaluating the -- the hotel
14 appraisals and the methods of -- of how the ABS team
15 came to those conclusions, you wouldn't expect to have
16 seen the discounted -- the discounted rates for their
17 valuation?

18 A No. I mean, they -- they were looking at a
19 before and after scenario, so I'm not -- I'm not sure
20 how the discounting would come into play there.

21 Q Well, I guess it would -- you know, again,
22 like the earlier testimony, if you're looking at the
23 value of -- of -- of land that's going to be developed
24 over the course of four years, you know, you had just
25 testified that you would take into account some

1 discounting factors on entitlement risk and
2 construction and the time value of money and that sort
3 of thing.

4 And if you didn't see that in the Macaulay
5 study, I guess my question is why wouldn't it be there
6 in this case?

7 A Well, they weren't appraising the value of the
8 specific improvements.

9 Q Well, so -- so weren't they, though? I mean,
10 what -- what -- what is it that they were valuing, if
11 not that?

12 A They were valuing the difference in value with
13 the improvements and without the improvements.

14 Q Okay. And -- and in your opinion, the -- the
15 value with after the improvements are completed didn't
16 need to take into account those discounting rates?

17 A No.

18 Q Okay. Are you familiar with the
19 PricewaterhouseCoopers Korpacz study or survey?

20 A Yes.

21 Q Are those -- is that a reliable source of land
22 development information?

23 A You know, I haven't really dug into their
24 studies on land development in particular, but, I
25 mean, they're generally reliable, yes.

1 Q Could you briefly explain what the Korpacz
2 survey is?

3 A Sure. They do -- well, I'm not sure exactly
4 who they -- they survey, but they survey developers, I
5 believe, property owners and report findings of those
6 in studies that come out, I think, four times a year
7 for various property types.

8 Q Okay. And does it sound reasonable to you
9 that the Quarter 2, 2020 Korpacz study found average
10 expected value change for land over the next years to
11 be negative 6.9?

12 A Does that sound -- is that surprising to me?
13 Is that the question?

14 Q Yeah, is that surprising?

15 A No.

16 Q And how --

17 A In the situation.

18 Q Correct. Yeah, and -- and, similarly, would
19 it surprise you that that same survey found that the
20 average discount rate, so what we were talking about
21 before, for land development today is at 15.2 percent,
22 and if that land is unentitled, it's up at
23 18.54 percent?

24 A No. I mean, that -- that wouldn't surprise
25 me.

1 Q And so if you had to appraise land today for
2 future development, would you take these numbers into
3 account?

4 A Perhaps. I mean, it's -- if you were doing a
5 residual approach, you most likely would, yes.

6 Q If you were to calculate the value of future
7 improvements using one of these discounted rates,
8 would that reduce the value of those future
9 improvements?

10 A Reduce it from what?

11 Q Well, if you're -- I guess a reduction in if
12 you're looking at how much is this property going to
13 be worth, is this land going to be worth, fully built
14 and entitled and five years from now, if you apply
15 this discounted rate, would that bring down the value
16 of that property? Your future --

17 A Yeah. You're discounting the future cash
18 flow, so it does -- it brings it back to today. So
19 yes.

20 Q Okay. But, again, your testimony is that was
21 not required in this scenario because it was just a
22 single before and after comparison?

23 A Yes.

24 MR. STILLWELL: Okay. Thank you. I
25 have no further questions.

1 MR. LUKENS: Thank you.

2 HEARING EXAMINER VANCIL: Thank you
3 Mr. Stillwell. I don't think we had any new exhibits
4 there; right?

5 MR. STILLWELL: We did not. I had some
6 exhibits in the list that I circulated that for sake
7 of time and sort of what was already covered, I did
8 not reference and will not be asking to be admitted.

9 HEARING EXAMINER VANCIL: Okay.

10 MR. STILLWELL: I believe the only
11 exhibit I used was the special benefit survey -- oh,
12 no, I'm sorry. There is one, the Olive 8 spreadsheet,
13 which was listed as Exhibit 135.

14 HEARING EXAMINER VANCIL: Okay. Any
15 objection to 135 being admitted?

16 135 is admitted.

17 (Exhibit 135 was admitted.)

18 MR. STILLWELL: Thank you.

19 HEARING EXAMINER VANCIL: Thank you,
20 Mr. Stillwell.

21 Mr. Reuter, do you have any questions for the
22 witness?

23 MR. REUTER: Yes, I do. Do I need to
24 introduce my case numbers?

25 HEARING EXAMINER VANCIL: No. I think

1 we've got it on the record that you're here for Case
2 Numbers 133 through 353, we'll say.

3 MR. REUTER: Okay. It's more than
4 that.

5 But, Mr. Lukens --

6 HEARING EXAMINER VANCIL: There's ten
7 of them, yes. If you want to list them all -- if you
8 want to, you can list them all again.

9 MR. REUTER: No.

10 HEARING EXAMINER VANCIL: I think it's
11 in the record is what I was saying.

12 MR. REUTER: Okay. Great. Thank you.

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

14 BY MR. REUTER:

15 Q Do you know what a HOST report is?

16 A Yes.

17 Q And did you consult HOST reports in your work
18 on this waterfront LID?

19 A Yes.

20 Q And what is a HOST report?

21 A A host report is published by Smith Travel
22 Research, STR. It's a composite of operating
23 statements from thousands of hotels across the
24 country, and they slice and dice them into various
25 size categories, rate categories, geographic

1 categories, those types of things.

2 Q And did -- did it contain sliced up
3 information about downtown Seattle?

4 A No. It doesn't get specific for a market. It
5 would be -- Seattle would be in the Pacific region so
6 you could do, you know, like, full service, urban
7 hotels in the Pacific region.

8 Q How are you billing for your time? Hourly?

9 A Yes.

10 Q And to whom do you bill?

11 A It goes through ABS Valuation.

12 Q And what's your hourly rate?

13 A For this 350 an hour.

14 Q And do you know the total of your invoices if
15 we exclude your testimony time?

16 A I can estimate it. I would say roughly, I
17 don't know, \$12,000.

18 Q So if we did the math on that, 12,000 divided
19 by 350, that would tell us how much time you spent on
20 this project?

21 A Roughly, yeah. I mean, those -- those are
22 rough numbers.

23 MR. REUTER: That's all I have.

24 Thanks.

25 MR. LUKENS: Thank you.

1 HEARING EXAMINER VANCIL: Thank you,
2 Mr. Lukens.

3 MR. LUKENS: Thank you.

4 HEARING EXAMINER VANCIL: That
5 concludes the cross-examination in this matter. It
6 also concludes our live hearing portion. We have
7 remaining a schedule for briefing, and I'll go over
8 that again based on my order on hearing schedule and
9 cross-examination issued June 12, 2020.

10 The City is entitled to submit written
11 declarations in lieu of live testimony up to the end
12 of this day, June 26. Those declarations are not
13 subject to cross-examination but instead are subject
14 to a response declaration by objectors qualifying for
15 cross-examination. Objectors qualifying for
16 cross-examination may file closing argument briefing
17 related only to matters raised during City witness
18 presentation and cross-examination including
19 preserving objections that you did not have an
20 opportunity to raise during -- during the direct.

21 The City may file a reply argument and declare
22 the materials to objectors' responsive briefing
23 declarations. The schedule for submitting
24 declarations and briefing is as follows: July 7 is
25 the deadline for objectors to file closing argument

1 brief to address any issues raised during City
2 presentation or cross-examination of the City's
3 witnesses.

4 Objectors may also submit responses to
5 declarations submitted by the City, and they have to
6 be submitted by that July -- same July 7 date.
7 July 14 is the deadline for the City to submit reply
8 to objectors' responding declarations.

9 I do want to emphasize that objectors did have
10 an opportunity to present oral or written closing
11 during their original scheduled times, and so this is
12 not a general closing statement that you should be
13 providing at this time. Instead it is focused on what
14 the City presented during its -- its part of the case
15 and then cross-examination.

16 We will have video recording availability --
17 the recordings of this week, the 23rd, the 25th, and
18 the 26th will be issued to cross-examining objectors
19 today, and the city -- Seattle Channel will be posting
20 those next week on our general population file that's
21 available on the link from the Office of Hearing
22 Examiner website.

23 The transcripts are slowly coming out. I
24 believe the transcript from the 19th will be available
25 today. The transcripts for the 23rd and 25th and 26th

1 will not be available until next week, possibly by
2 Tuesday or Wednesday. So you may want to essentially
3 reserve an opportunity in your briefing as you do to
4 cite to those transcripts if they come out in time for
5 you to get your briefing done. Otherwise, I invite
6 you simply to identify by time and witness -- time,
7 date, and witness any reference you make to testimony
8 recognizing that typically the Office of Hearing
9 Examiner does not provide transcripts for hearings.

10 The City has asked to do that in this case,
11 and we are through a private vendor. And so usually
12 we only do recorded -- the recordings of the hearing
13 and then transcripts are produced later for appeal.
14 But if they are made available here, you are welcome
15 to use those for reference.

16 Are there any questions from objectors or the
17 City as to remaining procedure?

18 Hearing none, this portion of the hearing is
19 concluded. I look forward to hearing your and
20 receiving your briefing. The Examiner's decision does
21 not have a deadline on it. As you can imagine, there
22 may be a few other cases and some matters that I've
23 got to pay attention to, and this is a substantial
24 record. My hope would be to have this completed by
25 mid-August, but if it comes out later, that's the way

1 it will be. And you'll know when you get it. But
2 that's -- I just wanted to let you know that that's
3 what I'm shooting for now. Thank you.

4 (The proceedings concluded at
5 2:17 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 June 26, 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 July, 2020.

Nancy M. Kottenstette
Nancy M. Kottenstette, RPR, CC 22

