From: <u>David Shih</u>
To: <u>City Clerk Filing</u>

**Subject:** Attention: Waterfront LID Appeal

**Date:** Saturday, September 19, 2020 12:11:23 AM

## **CAUTION: External Email**

To Whom it may concern:

Below is my notice of Appeal for

Notice of Appeal

Waterfront LID No. 6751

Hearing Examiner Case No. CWF-0078

Property Owners: David Shih Parcel Number: 2538830430

Address: 1521 Second Avenue, Apt. 1502, Seattle, WA 98101

I, David Shih, owners of the condominium property located at 15212nd Avenue, Apt 1502, Seattle WA, 98101 (Parcel No. 2538830430), objected to the Final Assessment for my parcel and now submit this appeal of the Recommendations of the Hearing Examiner regarding Waterfront LID No. 6751 Case No. CWF-0078 pursuant to:

## SMC 20.04.090.C

Any finding, recommendation, or decision of the Hearing Examiner, or officer designated by the

City Council to conduct a hearing pursuant to RCW 35.44.070 and RCW 35.44.080, shall be subject to appeal to the City Council, which may direct that the appeal shall be heard by a committee thereof.

However, we are not able to follow the instructions pursuant to:

## SMC 20.04.110 - Appeal to City Council.

In the event of an appeal to the City Council or a committee thereof the notice of appeal shall cite by page and line and quote verbatim that portion or portions of the findings, recommendations and decisions of the Hearing Examiner or officer from which the appeal is taken. The notice of appeal shall also include a concise statement of the basis therefor and in the event that appellant deems the references on the findings, recommendations and decisions inadequate, a reference by metered index numbers to the places in the electronically prepared record of the hearing where the pertinent material may be found. The notice of appeal shall also designate by name or title and by sub number the items or exhibits in the record to which reference will be made in argument or comment before the City Council or committee. Preparation of a written verbatim transcript of all or any designated part of the hearing shall be at the appellant's initiative and expense, but shall not be required unless within five (5) working days after the filing of a notice of appeal the City Council or designated committee thereof so notifies the appellant, who in no event shall be required to pay the cost of any portion of a verbatim transcript not pertinent to appellant's own appeal.

Because the City has not provided "metered index numbers", therefore our appeal cannot reference them. However, as part of the prehearing conference, we recommend that the Public Works committee secure and provide appellants with such a record, so that the appeals can then be supplemented with that additional information, so as to make the Committee's

consideration of each individual appeal more efficient and fair.

We appeal from the following portions of the Final Waterfront LID Assessment Findings and Recommendation of the Hearing Examiner and my comments are inline for each point below:

This is clearly erroneous and that we did provide exhibits and statements of fact and the Hearing Examiner failed to consider my argument likely because of the volume and complexity of the entire LID Objection documentation and hearing process.

CWF-0078 (2538830430) – The objection also raises the following common objection issues addressed below in the Legal Analysis section B: 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. In addition to these issues, the Objector included a Redfin estimate to challenge the City appraiser's valuation for the property. Without additional supporting evidence, the Redfin estimate is not adequate to demonstrate an error in the special assessment for this property. The Objector failed to meet the burden of proof required to demonstrate that the property will not receive a special benefit or that the City appraisal valuation process was flawed. Recommendation: denial

## Legal Analysis section B:

1. Plans and Specifications are not on file with the City Clerk's Office as called for in Ordinance 125760. The purpose of this hearing is not to enforce Ordinance 125760. This issue is not

relevant to whether any specific property will receive a special benefit or whether the City appraisal process was flawed and is therefore not within the Hearing Examiner's jurisdiction to consider in the context of an assessment hearing.

The LID is trying to pass on an assessment that I need to pay based on a study that suggest my property value will increase thus a "special benefit" so I would think this is relevant.

2. Plans and Specifications for the Proposal were not sufficient to allow an accurate measure of special assessment. Objectors argued that the Final Special Benefit Study ignores the impacts for development not expected to be completed until 2023/2024 and ignores the uncertainty of completing a five-year project on time and on budget. The LID statutes do not require the consideration of these impacts even though the assessment of special benefits may be done prior to completion of the improvements. In addition, Mr. Macaulay testified that appraisals are predictive and represent his expert conclusion about the value of a property and, in the case of a special benefit study, what the value will be if the improvements are in place. Objectors failed to contradict that position by reference to either the LID statutes or case law.

Mr Macaulay can base on his opinion that the value of the property will increase, but what if it fails to materialize. I don't believe that trying to predict the future is wise for even an expert, it should be based on the completion of the LID and if indeed improve the value, it will be reflected in future property taxes.

3. There has been no State Environmental Policy Act ("SEPA") review of the Waterfront LID formation ordinance, and the SEPA review for proposed LID Improvements is not complete. Objectors' claims that the proposed Waterfront LID Improvements have not undergone required environmental review State Environmental Policy Act ("SEPA") are misplaced in this forum. No SEPA appeal was filed, and such an appeal would have been inappropriate in

the context of a special assessment hearing. No Objector cited authority for SEPA issues to be addressed in a special assessment hearing. Instead, Objectors cited general principles of SEPA case law (if citations for authority were provided at all), such as the call to complete SEPA review at the earliest possible phase of proposed development. See e.g. King County v. Washington State Boundary Review Bd. for King County, 122 Wash.2d 648, 663, 860 P.2d 1024 (1993). Even under this generalized theory (that SEPA appellants can appeal in any forum desired simply based on the general principle of SEPA review being required at the earliest possible time), no Objector identified why the assessment hearing is the appropriate forum for a SEPA appeal, when in fact, earlier "opportunities" for raising SEPA challenges presented themselves—such as the Waterfront LID formation hearing and the Superior Court challenge under Chapter 35.43 RCW. Even if SEPA issues were appropriate for this forum, the Objectors failed to demonstrate that SEPA review was incomplete for the proposal. Marshall Foster testified for the City and described the environmental review that has been completed for the proposed Waterfront LID Improvements. Mr. Foster indicated that State Environmental Policy Act ("SEPA") review had been completed for many elements of the proposal and that additional review would occur at the appropriate permitting phase for certain specific portions of the proposal. In addition, the Declaration of Jill Macik dated April 30, 2020 provides extensive detail concerning the status of SEPA review, NEPA review, and permitting for the Waterfront LID.

Mr. Foster only provided SEPA for "many elements". I would request that the SEPA complete for ALL elements of the LID and please share the details with all of the objectors that raised this point.

4. The estimated value lift applied by ABS is less than 4%, which is within the margin of error for any appraisal and is therefore speculative. Several appraisers testifying on behalf of various Objectors raised this issue. However, as described by these appraisers, the 4% margin of error is viewed as a rule of thumb and is not a hard legal standard. As such, Objectors failed to show that the City appraisal was completed in error in the context of this issue.

I would like to reiterate that the uplift within 4% would be considered a margin of error and that the city appraisals should cite a percentage that is based on a legal standard.

5. Final assessments will bind future City Councils and budgets to complete the LID Improvements regardless of cost. It is unlawful to bind future City Councils and budgets. This issue is not within the jurisdiction of the Hearing Examiner to consider in the context of a special assessment hearing. The purpose of this hearing is not to consider and rule on every possible potential future outcome of the LID. Further, no Objector cited any authority for the Hearing Examiner to consider such an issue.

I understand it is not in the hearing examiner to consider, but please provide a solution when there are cost overrun to the project or what other forums would this issue be discussed and addressed.

6. Completion of the Waterfront LID proposal is too speculative to provide a special benefit. Some Objectors have argued that the special assessments are speculative because the designs for the Improvements are not yet complete, are subject to change, and that environmental permitting processes may require the City to alter the designs for the LID Improvements. Objectors offered no evidence that any potential changes would, in fact, alter the amount of special benefit provided by the Improvements. Conjecture of potential changes

is not adequate to meet Objectors' burden. Absent credible evidence that potential changes would impact the special benefit analysis, the assessments are valid so long as the LID's fundamental purpose is accomplished.

I would like to raise the point how to address in the event that alters the design and if the "special benefits" do not materialize, what would be the process that will address any changes in the assessment.

7. The LID Improvements provide regional benefits and do not provide local special benefits. The fact that the LID Improvements will provide benefits to the broader region or City does not prevent the LID Improvements from being considered "local improvements" that confer a special benefit to local properties. Washington courts have long recognized that a "local improvement" may provide both special and general benefits. See e.g. Ankeny v. City of Spokane, 92 Wn. 549, 552, 159 P. 806 (1916); and City of Seattle v. Rogers Clothing for Men, Inc., 114 Wn.2d 213, 228, 787 P.2d 39 (1990).

If the LID also has regional benefit, then the cost should also be shared among the people that will benefit and not put the burden on the local residents that live closest to the LID.

8. The LID Improvements will have negative impacts on value that were not considered by the City's valuation. Objectors argued that the Final Special Benefit Study failed to consider various negative impacts Objectors allege that the Waterfront LID Improvements will have. Objectors pointed out that the proposal will result in lost parking opportunities. The Final Special Benefit Study expressly specifies that ABS considered the impact of lost parking in its special benefit analysis. Many Objectors argued that the LID Improvements will result in increased incidents of drug use and crime and provide a haven for the homeless. Except for anecdotal evidence, no Objector provided any analysis or evidence concerning such impacts, and none demonstrated that there would be a negative impact on subject property value. Most of these concerns were related to existing circumstances and merely speculated that the LID Improvements would worsen conditions. In addition, the City's witnesses testified that a maintenance ordinance will help ensure clean, well-maintained improvements and that such measures are beneficial. Objectors presented no credible evidence that the City's appraiser failed to consider detriments that would result from the LID Improvements, or that the risk of these alleged detriments would have a net negative impact on their property values. Finally, in the hearing, the City offered specific evidence that the "negative impact" Objectors perceived with regard to pedestrian traffic and noise does not measurably affect property value in urban areas like Seattle.

I would like to point out that the ABS study only considers the positive aspect of the LID, a true complete study would need to include both the negative and positive aspect of the LID and assign both positive and negative value as a "special benefit".

9. The LID Improvements do not add anything significant to the Central Waterfront beyond what is already provided by existing infrastructure. This issues essentially raised a matter of opinion that was not supported by adequate evidence from Objectors in any instance.

I would like to raise that our opinion is just as valuable as the team from ABS where we live and work every day in the subject area and would know better than what type of changes would bring value to our property as both homeowners and potential buyers that ultimately determine the market project of properties around the LID.

10. Incorporation by reference of all objections made as part of King County Superior Court Case No. 19-2-05733-5 SEA. The Hearing Examiner does not have jurisdiction over matters raised within the context of a Superior Court appeal. Furthermore, the significant majority simply raised and dropped these issues by mere reference and incorporation. No effort was made to provide supporting argument or evidence to incorporate the issues raised in the Superior Court complaint.

We are not trained as lawyers but we try our best. I would like the Hearing Examiner read the court case and then determine the impact and relevance.

Finally, if the Redfin estimate cannot be used as proof for property value, please allow me to use the 2021 King County Property Records when its available to prove to you that property values do go down, it is not a one-way street.

I request and demand an appeal hearing with the City Council.

Please confirm that your office has received this and if there is anything else you need or anyone else I need to serve in order to perfect this appeal.

Thank you, David Shih