BEFORE THE CITY OF SEATTLE CITY COUNCIL

In re Proposed Final Assessment Roll for Local Improvement District No. 6751 ("Waterfront LID")	Hearing Examiner File No. CWF-0206
Parcel No.: 094200-0255 Women's University Club of Seattle.	NOTICE OF APPEAL RE: LID ASSESSMENT

Owner: Women's University Club of Seattle
Address: 1105 Sixth Ave
Seattle, WA 98101-3002

LID Map No. D-241

Contact: Judy Donnelly, Executive Manager
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I. RELIEF REQUESTED

The Women's University Club of Seattle requests the Seattle City Council find the proposed Waterfront Local Improvement District (LID) Improvements provide no special benefits to its property and impose no assessment against Women's University Club.

In the alternative, Women's University Club requests the City Council find that the City's appraised value for its land is fundamentally flawed as compared to its male counterpart The Rainier Club, as is the special benefit percentage assigned to it. Therefore, Women's University Club's assessment should be reduced to $14,104.

II. ASSIGNMENTS OF ERROR

The Hearing Examiner and City Clerk record for the Waterfront LID matter is not labeled in a manner that permits citation to it in a succinct way. If the City creates and provides property owners with metered index numbers or other uniform numbering system for the combined record, this appeal can be supplemented with that additional citation information.

A. The Hearing Examiner erred in failing to recommend the City Council complete State Environmental Policy Act review of the Waterfront LID Ordinance and Final Assessment Roll, including review of the social and economic impacts of the local improvement district on the public and the cost to property owners. *Hearing Examiner Findings and Recommendation*, Common Finding No. 3, p. 110 (September 8, 2020) (*HEFR*):

> **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.

B. The Hearing Examiner erred in summarily dismissing the undisputed testimony of the property owners' expert witnesses that the Waterfront LID Improvements provide no special benefits.

C. The Hearing Examiner erred in finding the six Waterfront LID Improvements provide special benefits. *HEFR,* Common Finding Nos. 9, and 11.a, pp. 113-114; Objection Issue Finding Nos. 3 and 4, p. 116:

> 3. Some Objectors argued that there is no support for the Final Special Benefit Study conclusion that the LID Improvements will create a special benefit because access to the waterfront already exists from the subject properties. Some Objectors rely on *In re Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958) in support of their claim that the LID Improvements will not provide a special benefit. In *In re Jones*, the Supreme Court held that a property owner could not be forced to pay a special assessment for the installation of a water main and fire hydrant on a street abutting his property because his property was already adequately connected to the City's water system. In holding that the additional improvements did not specially benefit the property, the Court stated "[t]he properties are not specially benefited by the improvement for the simple reason that they now enjoy from the city the identical services for which the local improvement assessment has been made."
> The City argues that these arguments ignore the scope and nature of the LID Improvements, misunderstand LID case law, and that the type of benefits accruing from the LID Improvements are distinguishable from those at issue in *In re Jones,* because the LID streetscape and park improvements provide a broader and more generalized array of benefits than the hardscape water system at issue in *In re Jones*.
> The City's argument is supported by testimony and evidence from its experts, but no case law is provided to support the differentiation between a hardscape benefit and the more ephemeral benefits of a park and/or related infrastructure.
> Regardless, the burden was not on the City to prove its case in this regard. Instead, Objectors had the burden of proof to demonstrate through evidence that properties will not be benefitted by the LID Improvements. In this case, Objectors simply adopted an accusatory tone and asserted that they are already benefited by access; they provided no evidence analyzing a contrast between their current circumstances and the proposed improvements. Therefore, Objectors failed to meet their burden with regard to this issue.
> 4. Objectors' position that the LID Improvements provide only a general benefit, and that there is insufficient evidence in the Final Special Benefit Study to support a conclusion of special benefits, was

> not supported given the evidence and testimony presented by the City and the contents of the Final Special Benefit Study. Concerning this issue, the Objectors failed to meet their burden of proof.

D. The Hearing Examiner erred in finding the Covid-19 pandemic is irrelevant to the City's Final Special Benefit Study and Waterfront LID. *HEFR,* Objection Issue Finding No. 14, p. 120:

> 14. A group of Objectors and their witnesses referenced impacts from COVID-19 on businesses and property value. The COVID-19 pandemic does not have any relevancy with concern to the issues addressed in the special assessment hearing, which is to determine if the City committed an error in the calculation of special assessments or valuation. The pandemic has no impact on the ABS appraisals in the Special Benefit Study because the date of valuation, October 1, 2019, predated the virus and appraisers are not required to predict unforeseeable events as part of their value analyses. The question of providing any relief to property owners on the basis of impacts from COVID-19 is a political question, not a legal issue on which the Hearing Examiner should provide a recommendation.

E. The Hearing Examiner erred in finding the Women's University Club briefing raised issues not raised in its written objection. *HERC,* Specific Case Finding No. CWF-0206, p. 55:

> CWF-0206 (0942000255) – Objector's final briefing raises issues not raised in the written objection. The purpose of allowing final briefing was to provide an opportunity for Objectors cross-examining the City experts to provide final arguments regarding issues raised during cross-examination. Raising issues for the first time in such briefing that was not included in the Objector's written objection is procedurally inappropriate. In this case it is particularly unwarranted as the Objector had raised only a narrow issue in the objection and the order providing for the Objector's participation in cross-examination explicitly conditioned the Objector's participation by stating Objector "participation in cross-examination is limited. Objector only introduced single page objection with succinct comparison-based objection, cross-examination is allowed only as to issue raised in objection." Even if Objector's additional issues concerning the City's valuation of the subject property are allowed, those arguments rely solely on data collected from the King County Assessor's Office and the declaration of the Objector's Executive Manager; this is not sufficient evidence to overcome the expert evidence submitted by the City appraiser. Objector argues that it is being assessed disproportionately to other similarly situated properties. However,

> Objector fails to provide credible, expert valuation evidence and has failed to account for important differences between Objector's property and the selected "comparable" properties. Most notably, Objector failed to take into account differing property rights associated with the parcels in question. The Objector uses the Rainier Club parcel as a comparable, but as the City describes in the record, the Rainier Club has sold the air rights to its property, whereas the subject property has retained those rights and therefore the value associated with them. The City indicated that it took this into account as part of the review for the 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 valuation was flawed.
> Recommendation: denial

F. The Hearing Examiner erred in refusing to consider the valuation evidence presented by Women's University Club. *HEFR,* Specific Case Finding No. CWF-0206, pp. 55-56, above.

G. The Hearing Examiner erred in failing to recommend a downward adjustment of the Final Assessment against Women's University Club. *HEFR,* Specific Case Finding No. CWF-0206, pp. 55-56, above.

H. Women's University Club joins in all errors and objections asserted by all property owners within the Waterfront LID.

III. CONCISE STATEMENT OF BASIS FOR APPEAL

A. The Waterfront LID must be reviewed for its social and economic impacts to the public and cost to property owners.

It is undisputed the City Council performed no State Environmental Policy Act review of the Waterfront LID Ordinance and Final Assessment Roll. Yet, this type of analysis is required by state and local State Environmental Policy Act laws, because it is critical to good decision-making. SMC Chapter 25.05; Chapter 197-11 WAC; SMC 25.05.800.Q. Women's University Club is not alone in facing this compulsory tax assessment for an aesthetic project that adds no value to its property and it cannot afford. The City Council must complete a State Environmental

Policy Act review of the Waterfront LID, including its social and economic impacts to the public and cost to property owners, prior to adoption of the Final Assessment Roll.

B. The Hearing Examiner erred in summarily dismissing the undisputed testimony of the property owners' expert witnesses that the Waterfront LID Improvements provide no special benefits.

With the release of the Final Special Benefit Study in January 2020, it finally became clearer what the City intends to build as part of the Waterfront LID Improvements, above what the public is already investing in a new Alaskan Way, new sidewalks, new bike path, and hundreds of trees and other landscaping. With the exception of the Overlook Walk (which has been significantly compromised) and new elevator at Union Street, the LID Improvements are aesthetic only, consisting of decorative concrete treatments and a mere 16 additional trees. Women's University Club encourages the City Council to carefully review the plan details and testimony of the expert appraisers as presented by the property owners.

1. <u>The City's Final Benefit Study is fundamentally flawed for several reasons.</u>

As the expert appraisers for the property owners testified, the City's Final Benefit Study is fundamentally flawed for numerous reasons:

a. Macaulay's Final Benefit Study does not address, measure, or calculate the total benefits or the general benefits created by the proposed Waterfront LID Improvements, which is required to calculate the special benefits attributable to the LID Improvements.

b. Macaulay's assigned special benefit increase percentages, in the Women's University Club case .75%, is a fraction of a percentage point, less than the standard used in the industry to use whole percentages, and it is less than 5% and within the margin of error for an appraisal. Therefore, it is not credible, not accepted in the appraisal industry, and speculative.

c. The LID Improvements are not adjacent to or appurtenant to most of the properties, including Women's University Club.

d. Macaulay's Final Benefit Study relies upon case studies from other cities that do not reasonably compare to and starkly contrast with Seattle's Central Waterfront in the without LID scenario. The baseline condition and value of Seattle's Central Waterfront without the Waterfront LID is not measurably impacted by the incremental change caused by the LID Improvements.

e. Macaulay's Final Benefit Study does not comply with the Universal Standards of Professional Appraisal Practice Standards 5 and 6, as required for all mass appraisals.

Anthony Gibbons, pp. 68-188 (February 24, 2020); *Anthony Gibbons*, pp. 47-186 (March 3, 2020); *Randall Scott*, pp. 187-233 (March 3, 2020); *Anthony Gibbons*, pp. 119-134 (April 14, 2020); *John Crompton*, pp. 37-156 (April 16, 2020); *Decl. A. Gibbons*, CWF-0318 et al. (June 2, 2020); *Decl. J. Crompton*, CWF-0318 et al. (June 2, 2020); *Peter Shorett*, CWF-0255, Ex. 55.

2. <u>The City's Final Special Benefit Study does not account for the general benefits</u>.

Local improvement districts "may be composed of general benefits, special benefits, or a combination of the two. Thus it may be necessary… to allocate the beneficial effects of project enhancement between special and general benefits and to consider only the special benefits in estimating the value of the property in the after situation." *Real Estate Valuation in Litigation*, Page 326, by Jim Eaton MAT; *Local and Road Improvement Districts Manual for Washington State 6th Edition*, pp. 4, 9, 10, 58, 65 (2009). Here, the expert witnesses for the property owners all testified that the City's appraisal is fundamentally flawed for failing to calculate the total benefits, less the general benefits, in order to calculate any special benefits. *Supra*. This is consistent with Washington caselaw and *LID Manual*. The City Council should order a new Final Benefit Study.

C. The LID Improvements provide no special benefits to the Women's University Club.

The Women's University Club is located at 1105 6th Avenue on the outer edge of the Waterfront LID. CWF-0206, Ex. 1. The building is seven blocks from the proposed LID

Improvements. CWF-0206, Ex. 1; *Decl. Judy Donnelly*, pp. 6-7. The building is used by the Women's University Club and some occasional room rentals. *Id.* The Women's University Club in a nonprofit with no net income. *Id.* at pp. 1 and 5. The building's users do not use the building to access Seattle's Central Waterfront. *Id.* at 7. Nor is the presence of the LID Improvements of any value to the property. *Id.* at 6-7. The LID Improvements do not specially benefit the Women's University Club of Seattle whatsoever. *Id.*

The requirement that property be specially benefitted by the improvements constructed in at least the amount of the assessment is an absolute. If there is no benefit, there can be no assessment. To hold otherwise would be to deprive the owner of property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution. *Heavens v. King County Rural Library District*, 66 Wn.2d 558, 564, 404 P.2d 453 (1965).

Special benefits are those derived from the improvements which are substantially more intense to the property which is assessed than to the rest of the municipality. *See Heavens v. King County Rural Library District*, 66 Wn.2d at 563; Local and Road Improvement Districts Manual for Washington State 6th Edition, p. 65 (2009). "All such assessments have one common element: they are for the construction of local improvements that are appurtenant to specific land and bring a benefit substantially more intense than is yielded to the rest of the municipality." *Heavens*, 66 Wn.2d at 563 (Emphasis added). Here, the LID Improvements are not appurtenant to the Women's University Club. In fact, they are several blocks away and offer no special benefits to the property, its members, or its tenants. *Decl. J. Donnelly*, pp. 6-7.

D. The Hearing Examiner erred in finding the Covid-19 pandemic is irrelevant to the City's Final Special Benefit Study and Waterfront LID.

The Appraisal Institute governs all appraisals in the United States and issued guidelines requiring all appraisals to analyze the impact of Covid-19 on property values. *Anthony Gibbons*, pp. 122:19-24, 123-124 (April 14, 2020); Ex. 93. Appraisers may not disregard the impacts of Covid-19 in their appraisals, may not lump the impacts of Covid-19 under their generalized

assumptions and disclaimers, and must update them. *Id.* at 123:15 – 124:15. The City appraiser must update his appraisal, and the City Council must order an updated appraisal that addresses the impacts of Covid-19. Ex. 93.

E. The Hearing Examiner erred in finding the Women's University Club briefing raised issues not raised in its written objection.

Women's University Club challenged both the City's baseline valuation for refusing to recognize its landmark and nonprofit status and the special benefit percentage assigned to it in its protest appeal. A copy of its protest is attached to this City Council appeal as Attachment A. It states, the Women's University Club "building is a designated Historic Landmark which cannot be redeveloped [and a] 501(c)(3) foundation which is housed on-premises." *Attachment A.* It also asserts "the assumed special benefit to WUC is unfairly high" and should be "adjusted downward to . . . not exceed the Rainier Club's .5 percent increase." *Attachment A.* As such, the Hearing Examiner erred in finding Women's University Club's briefing addresses issues not raised in its protest appeal.

F. The Hearing Examiner erred in refusing to consider the valuation evidence presented by Women's University Club.

Like all property owners, Women's University Club was encouraged to not participate in the February 4, 2020, hearing before the City's Hearing Examiner. CWF-0206, *Decl. Judy Donnelly*, 6:22-7:2. Thereafter, the Hearing Examiner failed to communicate with Women's University Club whatsoever until all property owner hearing dates were exhausted. *Id.* Instead, the Hearing Examiner held "testimony could be submitted by declaration." *HERC*, p. 5. And "[o]pportunities were also provided to the parties to supplement the record with declarations and responsive briefing." *Id.* Here, Women's University Club properly submitted a declaration from

its Executive Manager regarding the Waterfront LID, its baseline value, and the discriminatory treatment it received relative to the Rainier Club.

It is well-established in Washington that property owners and their managers are competent to testify regarding the value of their properties.

> It is settled law in this state that the owner of property may testify as to its value upon the assumption or presumption that he is so far familiar with the property and its uses as to know its worth. *Wicklund v. Allraum*, 122 Wash. 546, 211 P. 760, and cases there cited.
>
> If this be the rule as to one private owner, it must likewise be the rule as to all private owners. A corporation can give testimony only through an officer or agent, and if an individual owner may testify, then the one particular individual who controls and manages the corporation must, of necessity, be permitted to testify in order that the rule may be general and uniform in its application. In spite of some authorities from other states which seem to look in the other direction, we think that equality and uniformity require the holding that respondent's testimony was admissible.

Weber v. W. Seattle Land & Improv. Co., 188 Wash. 512, 517, 63 P.2d 418 (1936). Here, Women's University Club Executive Manager, Judy Donnelly, has years of experience managing the property. She was competent to testify to the fact that the baseline value assigned to the Women's University Club was greatly inflated, over 3.5 times higher than the actual value of the Women's University Club. CWF-0206, *Decl. J. Donnelly*, pp. 5-6. The Hearing Examiner erred in rejecting Ms. Donnelly's testimony as to the baseline value of the property.

G. The Hearing Examiner erred in failing to recommend a downward adjustment of the Final Assessment against Women's University Club.

1. The Women's University Club, a landmark and nonprofit, was treated disproportionately from other similar properties closer to the LID Improvements.

The City did not address or rebut the Women's University Club protest and appeal during its case in chief on April 18, 19, and 23, 2020. *Hearing Transcripts* (April 18, 19, and 23, 2020). As such, it is undisputed the City failed to take into account the landmark and nonprofit status of

the Women's University Club in determining its baseline value and its special benefit percentage.

Instead, during cross-examination the City's appraiser, Robert Macaulay, acknowledged that he did not note any deed or development restrictions on the property. *Robert Macaulay*, p. 77:8-12 (June 25, 2020). The Women's University Club of Seattle is a landmark property owned and occupied by a nonprofit foundation with no net revenue. CWF-0206, *Decl. Donnelly*, pp. 1-3.

2. <u>The special benefit percentage increase assigned to Women's University Club should be adjusted downward to that of the Rainier Club.</u>

The Women's University Club is several blocks from the LID Improvements[1] in Area D. CWF-0336, Ex. 19, spreadsheet pp. 1, 6, and 10 of 13 (D-241, C-138); *Decl. J. Donnelly*, pp. 6-7. "Generally, this area [D] represents the outer limits of the LID boundary and demonstrates the lowest level of project impact/benefit." CWF-0336, Ex. 19 (Final Special Benefit Study, p. 35). Despite being in Area D, the Women's University Club was assigned a higher special benefit value (.75%) than several landmark properties closer to the LID Improvements, including the Rainier Club.

For example:

Property Number	Name	Address	Special Benefit %	Final Assessment
D-241	Women's University Club (not a recognized landmark)	1105 6th Avenue	.75%	$76,031
C-138	Rainier Club (landmark)	804 4th Avenue	.5%	$83,850

[1] No measurable improvements are planned for Pike and Pine Streets between 4th Avenue and 9th Avenue. Final Special Benefit Study, Addenda E-2 and F-14 to F-19.

CWF-0336, Ex. 19, spreadsheet D-241, C-138. In contrast to the Final Special Benefit Study, which declares Area D properties are furthest from the LID Improvements and received the lowest special benefits, Mr. Macaulay testified he simply could "not recall" whether Area D properties should have received the lowest special benefit percentages compared with other properties. CWF-0336, Ex. 19 (Final Special Benefit Study, p. 35); *Robert Macaulay*, p. 72:7 (June 25, 2020). The City's appraiser offered no explanation or evidence to support the disparate treatment of the Women's University Club of Seattle.

It is particularly concerning that the assessment for the Women's University Club (traditionally a women's club) is higher than that for the Rainier Club (traditionally a men's club), given that the Rainer Club is closer to (and faces) the proposed improvements.

H. Women's University Club joins in all errors and objections asserted by all property owners within the Waterfront LID.

It is not possible to address all of the errors that exist within the City's Waterfront LID, both procedurally and substantively within the time allotted for the appeal. The Women's University Club thus joins in all errors and objections presented by the other property owners.

IV. CONCLUSION

The Women's University Club requests the City Council find there are no special benefits for Women's University Club. Alternatively, Women's University Club requests the City Council find the assessment against the Women's University Club is erroneous for failing to account for the property's landmark status and not assigning it a lower special benefit increase proportionate to the Rainier Club. As a consequence, the City Council should reduce the Women's University Club assessment to $14,104.

Signed this 21 day of September 2020.

Judy Donnelly

Judy Donnelly, Executive Manager
Women's University Club of Seattle