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17 **BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE**  
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19  
20 In re Proposed Final Assessment Roll for  
21 Local Improvement District No. 6751  
22 (“Waterfront LID”)  
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Hearing Examiner File No. CWF-0427

NOTICE OF APPEAL OF HEARING  
EXAMINER’S FINDINGS AND  
RECOMMENDATION ON EQR-HARBOR  
STEPS LLC’S OBJECTION TO  
WATERFRONT LID NO. 6751 PROPOSED  
FINAL ASSESSMENT FOR PARCEL NO.  
1976200076

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33 Eqr-Harbor Steps LLC (“Harbor Steps”) files this appeal pursuant to RCW  
34 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, the notice  
35 of the Seattle Office of the City Clerk dated December 30, 2019, and the Hearing  
36  
37 Examiner’s Findings and Recommendation issued September 8, 2020 (“Examiner’s  
38  
39 Recommendation”).  
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42

43 **I. Taxpayer / Appellant**  
44

45 The Taxpayer filing this appeal is:  
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47

1 Eqr-Harbor Steps LLC  
2 Eqr-RE Tax Dept.  
3 PO Box 87407 (27193)  
4 Chicago, IL 60680-0407  
5

6 **II. Taxpayer's Representatives**  
7

8 Harbor Steps' representatives in this matter are:  
9

10 R. Gerard Lutz, WSBA No. 17692  
11 JLutz@perkinscoie.com  
12 Megan Lin, WSBA No. 53716  
13 Perkins Coie LLP  
14 10885 N.E. Fourth Street, Suite 700  
15 Bellevue, Washington 98004  
16 Telephone: 425.635.1400  
17 Facsimile: 425.635.2400  
18  
19

20 Robert L. Mahon, WSBA No. 26523  
21 RMahon@perkinscoie.com  
22 1201 Third Avenue, Suite 4900  
23 Seattle, Washington 98101  
24 Telephone: 206.359.8000  
25 Facsimile: 206.359.9000  
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28 **III. Statement of Taxpayer's Interest**  
29

30 Harbor Steps owns the property that is subject to the proposed final assessment  
31 described in Section IV. The property at issue is a multifamily residential apartment building  
32 with ground floor retail. Additionally, there is a pedestrian corridor connecting the  
33 downtown retail core to the waterfront amenities.  
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36 The basis of the proposed assessment is a Final Special Benefit/Proportionate  
37 Assessment Study for Waterfront Seattle Local Improvement District ("Final Study"), dated  
38 October 1, 2019 and prepared by Robert Macaulay with ABS Valuation (the City's  
39 appraiser). The Final Study proposes assessments that are purportedly limited to paying for  
40 the LID-funded components—namely, the Promenade, Overlook Walk, Pioneer Square  
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1 Street Improvements, Union Street Pedestrian Connection, Pike/Pine Streetscape  
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3 Improvements, and Pier 58 (together, the “LID Improvements”). The Final Study purports  
4  
5 to exclude charges for other improvement projects in the Central Waterfront, and  
6  
7 specifically those WSDOT had already agreed to pay for and construct: viaduct demolition,  
8  
9 the new Alaskan/Elliott Way surface street, the new/improved Seawall, the State Route 99  
10  
11 Tunnel, the Pier 62 rebuild, Bell Street improvements, and parking spaces WSDOT planned  
12  
13 fronting piers between Pike and Madison (together, the “WSDOT Improvements”). But  
14  
15 because construction was not complete on the LID Improvements or the WSDOT  
16  
17 Improvements at the time the Final Study was prepared, Mr. Macaulay’s October 1, 2019  
18  
19 “Before” and “After” valuations are both based on hypothetical conditions rather than actual  
20  
21 facts. On February 4, 2020, Taxpayer timely filed an objection to the assessment, which was  
22  
23 based on the Final Study.

24  
25 **IV. Matter Under Appeal**

26 Harbor Steps appeals the Hearing Examiner’s recommendation to deny Taxpayer’s  
27  
28 objection to the City of Seattle’s Waterfront Local Improvement District No. 6751 proposed  
29  
30 final assessment dated December 30, 2019 against the following property:

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32  
33 King County Parcel No. 1976200076  
34 Site Address: 1201 1st Ave., Seattle, Washington  
35 Proposed Final LID Assessment for Parcel: \$1,767,509.04

36  
37 See Examiner’s Recommendation at 61-62, 105-106. To avoid repetition, Harbor Steps  
38  
39 incorporates the evidence and arguments raised before the Hearing Examiner into this  
40  
41 appeal. In particular, Harbor Steps points the City Council to Taxpayer’s initial Appeal  
42  
43 Petition, *Frye* motion, Closing Brief submitted at the close of its case-in-chief (dated  
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1 4/16/2020), and supplemental Closing Statement submitted at the close of the City's case-in-  
2 chief (dated 7/7/2020).<sup>1</sup>  
3

4 As discussed more fully below, Taxpayer specifically appeals the following Findings  
5 and Recommendations in the Hearing Examiner's September 8, 2020 Recommendation:  
6  
7 Pages 61-62, 105-106, Sections II.6, II.7, II.13, II.14, II.15, II.18, II.19, II.20, II.21, II.22,  
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9 II.23, II.24, II.25, II.26, II.27, II.28, II.29, II.30, II.31, II.32, II.33, IV.A, IV.B.1, IV.B.2,  
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11 IV.B.3, IV.B.4, IV.B.5, IV.B.6, IV.B.7, IV.B.8, IV.B.9, IV.B.11(a), IV.B.11(a)(i),  
12  
13 IV.B.11(a)(ii), IV.B.11(a)(iii), IV.B.11(a)(iv), IV.B.11(c), IV.C.3, IV.C.4, IV.C.5, IV.C.7,  
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15 IV.C.8, IV.C.9, IV.C.11, IV.C.12, IV.C.14, IV.C.18  
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18 Taxpayer also appeals the Hearing Examiner's failure to make findings of fact or  
19 recommendations on material issues raised during Taxpayer's appeal that were supported by  
20 law, expert testimony, and fact. The Final Study fails in numerous ways to satisfy the basic  
21 requirements of a LID assessment study, and the Examiner's Recommendation ignores the  
22 many deficiencies in the Final Study. In fact, the only instances in which the Examiner  
23 recommended anything other than denial of objectors' appeals were where the City's  
24 appraiser confessed error. The appraiser's proposed assessments, and the Examiner's  
25 Recommendations, would have the City impose arbitrary and capricious Waterfront LID  
26 special assessments based on "fundamentally wrong methods."  
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40 <sup>1</sup> Because the City has not provided "metered index numbers," our appeals cannot reference  
41 them. See SMC 20.04.110. However, as part of the prehearing conference, we recommend that the  
42 Public Works committee secure and provide appellants with such a record, so that the appeals can  
43 then be supplemented with that additional information, so as to make the Committee's consideration  
44 of each individual appeal more efficient and fair. Until that is provided, unless otherwise stated,  
45 citations to the record before the Hearing Examiner are to the record for CWF-0233. Based on the  
46 Examiner's electronic records, it appears most of the materials submitted on behalf of all objectors  
47 retained by Perkins Coie are part of this case file.

1 The special benefit for which special taxes are assessed must be “actual, physical and  
2 material and not merely speculative or conjectural.” *Heavens v. King Cty. Rural Library*  
3 *Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965). For a proposed assessment roll to comply  
4 with the law, the assessments may not materially exceed the actual special benefit conferred  
5 by the LID Improvements. *Id.* The special benefit assessment cannot include charges for  
6 general benefits enjoyed by the public at large. *Id.* Further, LID assessments must be  
7 proportionate. *Id.* Failure to meet any one of these legal requirements is fatal to the  
8 assessment. In this case, the proposed assessment fails each of the legal requirements for  
9 special assessments and must be annulled as arbitrary or capricious, or founded on  
10 fundamentally wrong methods.  
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22 **Legal Requirement:** Actual, non-speculative special benefit

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24 **ABS Study:** Estimates a hypothetical benefit based on “Before” values that increase  
25 “actual 2019” values (unstated) assuming the WSDOT Improvements were in place in  
26 October 2019 (they were not), and an “After” value purporting to assess the value of  
27 properties with the LID improvements in place at least five years before anticipated  
28 completion.  
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31 **Legal Requirement:** Cannot materially exceed the special benefit

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33 **ABS Study:** ABS calculates a special benefit of \$4,511,000 assuming the LID  
34 Improvements were in place and providing benefit in October 2019. However, the LID  
35 Improvements will not be completed until the end of 2024 if the City meets its current  
36 schedule, and many of WSDOT’s alternative improvements will not be built. The present  
37 value of future improvements deliverable in five years is significantly lower than the  
38 current value of improvements that already exist. Further, ABS’s own materials show that  
39 benefits may not accrue for at least five years after they are completed, in 2029. If the  
40 hypothesized special benefits are discounted to present value, the assessments materially  
41 exceed the hypothesized special benefits.  
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45 **Legal Requirement:** Actual, non-speculative special benefit—Date of valuation/COVID  
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1 **ABS Study:** The City has not finalized the assessment roll. After the City's appraiser  
2 prepared his Final Study in October 2019, and the City issued its preliminary roll in  
3 December 2019, COVID devastated downtown hotel and retail properties. The Hearing  
4 Examiner finds that COVID is irrelevant because it happened after ABS's appraisal and  
5 the City's preliminary roll. On the contrary, the City's assessments have yet to be made  
6 and must be based on actual special benefits. While that does not mean ABS's appraisal  
7 was wrong when completed, values and benefits need to be reanalyzed before assessments  
8 are finalized in light of the unprecedented changes to the downtown real property market.  
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10  
11 **Legal Requirement:** Actual benefit that cannot materially exceed special benefit—  
12 Assessment cannot include value attributable to future WSDOT Improvements.  
13

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15 **ABS Study:** The City's appraiser asserts that the City is not collecting assessments "based  
16 on the value of WSDOT's planned improvements." See Final Study at 3. However, the  
17 City's own expert, Mark Lukens, acknowledged that was false. In the "Before" condition,  
18 the City's appraiser increased 2019 property market values as though WSDOT had  
19 completed its work by 2019. The proposed assessment is against this hypothetical  
20 WSDOT-enhanced "Before" value, which ABS acknowledges is (to some unstated extent)  
21 higher than actual 2019 market values. The City is collecting an assessment against both  
22 the 2019 current values and the phantom 2019 WSDOT market value lift, in direct  
23 contravention of law and the City's promise not to impose an assessment based on the  
24 value of viaduct demolition and the other components of WSDOT's planned work.  
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27 **Legal Requirement:** Benefits must be special, not general  
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30 **ABS Study:** The City's appraiser fails to determine or explain what general benefits arise  
31 due to the LID Improvements. However, the far-reaching and public nature of the  
32 improvements make any benefit arising from them general—not special.  
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34 **Legal Requirement:** Benefits must be "physical and material and not merely speculative  
35 or conjectural . . . ."  
36

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38 **ABS Study:** Not only are the improvements not yet "physical or material," but  
39 environmental review and permitting for the City's proposed LID Improvements is not  
40 complete, and the LID improvements are not anticipated to be complete until the end of  
41 2024. The appraiser nevertheless hypothesized that they were all completed as of 2019 in  
42 a manner consistent the City's then-current proposals, which were in many respects merely  
43 conceptual designs.  
44

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46 **Legal Requirement:** Must comply with appraisal standards  
47

1 **ABS Study:** ABS's valuation methodology cannot be tested. It is a hybrid of "Individual" and "Mass" appraisal techniques, but fails to meet USPAP requirements for either. Until  
2 the Examiner admonished ABS, ABS even asserted its analysis was "confidential and  
3 proprietary." ABS's analysis and conclusions can neither be tested nor replicated. The  
4 Final Study fails to meet basic standards for admissibility and must be remanded.  
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8 **Legal Requirement:** Actual and measurable special benefit  
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10 **ABS Study:** ABS's proposed assessments are assigned rather than measured, as  
11 demonstrated by formulas in ABS's spreadsheets. The percentage assignments are based  
12 on a host of "micro-judgments" that are not supported by any documentation, nor capable  
13 of replication or quality assurance/quality control. The assessments are undocumented,  
14 unreliable, and not supported by empirical studies, data, or reports.  
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17 **Legal Requirement:** Actual and measurable special benefit—Park benefits must be  
18 supported by empirical evidence  
19

20 **ABS Study:** Dr. John Crompton, the world's preeminent expert regarding the economic  
21 value of parks and other public amenities and on whom ABS purported to rely, testified  
22 that ABS had completely misapplied his work and dramatically overstated both the  
23 distance to which economic benefits might extend from the LID Improvements and the  
24 extent of any anticipated benefit within the potentially benefited area.  
25  
26

27 **Legal Requirement:** Actual special benefit—Must take into account potential  
28 disamenities  
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30 **ABS Study:** The appraiser ignores the negative value impact of five years or more of  
31 construction, as well as other potential disamenities associated with public places.  
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34 **Legal Requirement:** Cannot prematurely commit to build  
35

36 **ABS Study:** The City has not completed NEPA review or other entitlement process for its  
37 Pier 58 plans or planned Pike Pine or Pioneer Square improvements for which assessments  
38 are being imposed. But finalizing the roll is a commitment by the City to build the  
39 improvements, which is a violation of legal process and commits the City to build things it  
40 may not secure permission to build.  
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1 In addition to these general objections, there are property-specific issues raised by  
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3 Taxpayer as to which the Examiner also erred, discussed in the course of the appeal  
4  
5 statement below.  
6

7 **V. Standard of Review**  
8

9 “When considering the assessment roll, the city council sits ‘as a board of  
10 equalization.’” *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 948, 320 P.3d 163  
11 (2014) (quoting RCW 35.44.080(2)). “As such, the council or hearings officer ‘will consider  
12 the objections made and will correct, revise, raise, lower, change, or modify the roll or any  
13 part thereof or set aside the roll.’” *Id.* at 949 (quoting RCW 35.44.080(3)).  
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18 The proposed assessments are presumed correct, “unless overcome by clear, cogent  
19 and convincing evidence.” *Hasit*, 179 Wn. App. at 948. This standard is less deferential  
20  
21 than the heightened presumption of correctness on judicial appeal because “applying these  
22 elevated standards at the municipal hearing would afford unwarranted deference to a report  
23 prepared under contract by a private appraisal firm.” *Id.* at 949. Importantly, “a  
24  
25 presumption is not evidence and its efficacy is lost when the other party adduces credible  
26 evidence to the contrary.... The sole purpose of a presumption is to establish which party has  
27 the burden of going forward with evidence on an issue....” *In re Indian Trail Trunk Sewer*  
28 *Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983). In other words, because objectors have  
29 presented credible evidence showing that the City’s proposed assessment is arbitrary,  
30 capricious and founded on a number of fundamentally wrong foundations, the burden shifts  
31 to the City to prove the assessments are actual, measurable, special, non-speculative and  
32 proportionate. The City failed that burden.  
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1 **VI. Grounds for Appeal**

2 Harbor Steps appeals the Hearing Examiner's Findings and Recommendations on the  
3 following grounds.  
4

5 **Taxpayer Not Required to Provide A Special Benefit Study**

6  
7 1. Contrary to the Examiner's findings and recommendations, there is no  
8 requirement that experts or property owners provide an alternative special benefit  
9 calculation under these circumstances—to do so would also require the same improper  
10 speculation the City's expert engaged in, given the timing and information provided. *See,*  
11 *e.g.,* Decl. of Anthony Gibbons ISO Closing Stmt., ¶ 3(dated 7/7/2020); *see also* Decl. of  
12 Ben Scott ISO Closing Stmt., ¶ 3(dated 7/7/2020); Decl. of Brian O'Connor ISO Closing  
13 Stmt., ¶ 3(dated 7/7/2020). A Washington court has explained: "[W]e have explicitly  
14 rejected an argument that, because certain protestors 'failed to offer expert testimony at the  
15 city council hearing[,] the presumptions [in favor of the assessment] were still operative as  
16 to their property.'" *Hasit*, 179 Wn. App. at 946 (quoting *In re Indian Trail Trunk Sewer*, 35  
17 Wn. App. at 843); *see also Kuskys v. City of Goldendale*, 85 Wn. App. 493, 933 P.2d 430  
18 (1997) (although appraiser did not submit an appraisal, he provided expert opinion showing  
19 that improvements actually diminished value of the property). In fact, no independent  
20 evidence is required at all if, for example, objectors show that the assessment was grounded  
21 on a fundamentally wrong basis due to an error in the City's appraiser's methods—as is the  
22 case here. *Hasit*, 179 Wn. App. at 947 (citing *Doolittle v. City of Everett*, 114 Wn. 2d 88,  
23 106, 786 P.2d 253 (1990)). As a simple example, a property owner could simply point out  
24 that the square footage assumed in the City's appraisal was incorrect.  
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27 2. On March 5, 2020, Harbor Steps presented testimony from experts Ben Scott  
28 and Brian O'Connor. The Hearing Examiner failed to meaningfully respond either the expert  
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1 testimony or the expert appraisal reviews. Instead, the Hearing Examiner simply dismissed  
2 Harbor Steps' expert evidence as insufficient appraisal evidence. *See* Examiner's  
3 Recommendation at IV. C.7–9. This is contrary to law.  
4

5  
6 3. For these reasons, Taxpayer appeals the following portions of the Examiner's  
7 Recommendation: Sections II.13, II.14, II.15, IV.A, IV.B.11(a), IV.C.7, IV.C.8, IV.C.9, and  
8 IV.C.11.  
9

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11  
12 **No Actual, Measurable, Non-speculative, Proportionate, Special Benefit**

13  
14 4. RCW 35.43.040 provides cities and towns authority for ordering local  
15 improvements and for levying and collecting special assessments “on property specially  
16 benefited thereby[.]” The cost and expense of the local improvement “shall be assessed upon  
17 all the property in accordance with the special benefits conferred thereon.” RCW 35.44.010.  
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19  
20 5. No analysis of general benefits. Special assessments have been “held valid  
21 for the construction and improvement of streets, curbs, gutters, sidewalks, and for the  
22 installation of sanitary and storm sewers, drains, levees, ditches, street lighting, and water  
23 mains.” *Heavens*, 66 Wn. 2d at 563. “All such assessments have one common element:  
24 they are for the construction of local improvements that are appurtenant to specific land and  
25 bring a benefit substantially more intense than is yielded to the rest of the municipality.” *Id.*  
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27  
28 6. Harbor Steps' property is not specially benefited by the LID Improvements.  
29 The primary purpose and effect of the LID Improvements are to benefit “members of the  
30 whole community” and the public at large. *See, e.g., id.* at 565 (“it is plain that a public  
31 library is for the benefit of the members of the whole community individually and  
32 collectively who may be served by it”). Mr. Macaulay's own chapter of the LID Manual  
33 states clearly that appraisers should “[c]onsider general benefits as well as special benefits”  
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1 (Hrg. Exhibit 117 (LID Manual) at 58<sup>2</sup>) and he admits that “general benefits probably accrue  
2 to the LID area” as well (*see* 6/23/2020 Hrg. Tr. at 22:4-12). Taxpayer’s expert confirmed  
3 that if an appraiser “identifies both general and special benefits, these benefits should be  
4 clearly distinguished and explained, and only special benefits should be included in the  
5 After assessment.” Gibbons Decl. ISO Closing Stmt., ¶ 4 (dated 7/7/2020); *see also*  
6 3/3/2020 (A. Gibbons) Hrg. Tr. at 96:6-97:4; 3/5/2020 (B. O’Connor) Hrg. Tr. at 158:13-  
7 159:8, 192:8-193:2. It is undisputed that Mr. Macaulay did not analyze or measure general  
8 benefits, including those arising from construction necessary to meet basic design standards.  
9 *See* Hrg. Exhibit 117 (LID Manual) at 58 (“[c]onsideration may also be given to those  
10 construction costs related to meeting design standards which may be general benefits as  
11 distinct from construction costs emanating from requirements of the LID project”). To the  
12 extent Taxpayer’s property may benefit from the LID improvements, the benefit is general  
13 and incidental, and failure to consider general benefits was a fatal flaw in the City’s  
14 methodology. For these reasons, Taxpayer appeals the following portions of the Examiner’s  
15 Recommendation: Sections IV.B.7, and IV.B.11(a)(i), IV.B.11(a)(iv), and IV.C.4.

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31 7. LID Improvements not necessary. Unlike typical LID projects, the  
32 Waterfront LID improvements are largely unnecessary to the functionality of any particular  
33 property, including Taxpayer’s property. *See In re Schmitz*, 44 Wn.2d 429, 433, 268 P.2d  
34 436 (1954) (assessment levied for the purpose of raising the grade of a road by 16 to 18 feet  
35 held invalid where owners would have benefitted equally from increase of only 9 feet);  
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43 <sup>2</sup> “Hrg. Exhibits” refer to exhibits that were submitted on behalf of multiple objectors  
44 represented by Perkins Coie during its seven days of hearing before Hearing Examiner Vancil  
45 (March 3, March 5, March 11, March 12, April 13, April 14, and April 16, 2020) and during the two  
46 days of cross-examination of the City’s witnesses (June 23, 25 and 26, 2020). For ease of reference,  
47 Taxpayer has attached a master list of the hearing exhibits as Attachment A to this appeal notice.

1 *Appeals of Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958) (assessment against land at  
2 intersection for new water main for hydrant held invalid because land was already afforded  
3 functional hydrant at nearby street Here, Taxpayer testified that the LID Improvements are  
4 not necessary to the business of their income-producing properties, all of which already have  
5 sufficient access to the waterfront, downtown restaurants, and other amenities necessary for  
6 their tenants and clients. And for residential properties, like Harbor Steps, the assumption  
7 that an increase in tourism will cause lifts in property value is both anecdotally and  
8 empirically unsupported. Additionally, the construction of new access points is in fact a  
9 negative point for the Harbor Steps, which are located at an existing connection between the  
10 downtown core and the waterfront. The LID improvements will draw foot traffic away from  
11 the Harbor Steps, increasing competition in other areas of the city. The fact that there is no  
12 case law differentiating between binary improvements and parks does not change the law  
13 prohibiting assessments on properties already adequately served by existing amenities. *See*  
14 Examiner's Recommendation at IV.C.3 (reasoning that "no case law is provided to support  
15 the differentiation between a hardscape benefit and the more ephemeral benefits of park").  
16 Nor does the Examiner's reasoning excuse the City's failure to account for existing  
17 amenities as part of the special benefit calculation. As Dr. Crompton testified, existing view  
18 amenities may in fact diminish the incremental effect of new park improvements on the  
19 value of properties, much like turning on a weak light in an already brightly illuminated  
20 room. *See* Hrg. Exhibit 94 (Crompton's Report) at 12-13.

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41 8. To the extent benefits can be considered "special" as opposed to general, they  
42 are nominal or nonexistent for many properties even in the Central Waterfront, which  
43 already has a promenade, viewpoints, as well as connecting streets and bridges. *Douglass v.*  
44 *Spokane Cty.*, 115 Wn. App. 900, 64 P.3d 71 (2003) (properties' fair market value did not  
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1 change due to expansion of sewer service *near* owners' parcel which were already  
2 connected). Here, the primary reasons a user chooses a particular apartment is not proximity  
3 to the waterfront. Instead, the reason residents choose to live in the Harbor Steps apartments  
4 is proximity to their places of employment and other amenities downtown. See 3/5/2020 (E.  
5 Leigh0 Hrg. Tr at 113:13-114:20; 124:3-126:9. For example, without any supporting written  
6 analysis, Mr. Macaulay offhandedly concludes that the Harbor Steps apartments would  
7 benefit from increased connectivity from being four to five blocks from the Overlook Walk  
8 even though the properties currently have direct access to the waterfront via the Harbor  
9 Steps. 6/23/2020 Hrg. Tr. At 48:1-50:25; see also B. Scott Decl., ¶ 7. Mr. Leigh testified that  
10 he did not anticipate a benefit, and that the Harbor Steps retail component would suffer if a  
11 measurable portion of waterfront-bound pedestrian traffic moved north to the market. See  
12 also B. Scott Decl., ¶ 6 (describing failure to analyze how existing retail is harmed by foot  
13 traffic being pulled away towards new amenities). Even if the City could assess for a view  
14 change (and it has promised not to assess for viaduct removal), the fair market value of  
15 Harbor Steps' property has not changed because the LID Improvements have not improved  
16 the property's waterfront view or access to the waterfront, nor will they when the City  
17 anticipates completion in 2024. For these reasons, Taxpayer appeals the following portions  
18 of the Examiner's Recommendation: Sections IV.C.3, IV.B.9, and IV.C.3.

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37 9. No analysis of special detriments. The Final Study fails to properly account  
38 for special detriments. *See Kusky*, 85 Wn. App. at 501 (city failed to consider the costs to  
39 owners for removal and cleanup of underground storage tanks discovered during the  
40 improvement project). The Property owner representative for Harbor Steps, Ed Leigh,  
41 testified that property values may in fact be negatively impacted by the LID Improvements  
42 due to loss of parking, increased traffic and noise, and increased potential for crime,  
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1 homelessness and sanitation issues. Mr. Leigh testified that the assessment is an immediate  
2 expense for Harbor Steps that comes with no immediate increase in revenue, thereby  
3 decreasing property values. See 3/5/2020 (E. Leigh) Hrg. Tr. at 126:10-129:9; 227:8-229:10.  
4  
5 And Harbor Steps does not expect near term the increases assumed in ABS Valuations'  
6  
7 spreadsheets or the Final Study. Although Mr. Macaulay claims he analyzed impacts on the  
8  
9 City's planned elimination of 450 parking stalls on a parcel-by-parcel basis, there is no  
10  
11 explanation of how lost parking might be a detriment, and no property-specific parking  
12  
13 analysis in any of his materials. 6/23/2020 Hrg. Tr. at 185:20-24; 186:14-187:12.  
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16  
17 10. Likewise, there was no analysis of the risks associated with disamenities such  
18  
19 as increased crime, homelessness and unsanitary conditions, and Mr. Macaulay did not  
20  
21 quantify the risk that the waterfront will not in fact be maintained. 6/23/2020 Hrg. Tr. at  
22  
23 193:21-194. Instead he relied on the maintenance ordinance (Ordinance 125761) to dismiss  
24  
25 these concerns. However, Mr. Foster explained that although the ordinance anticipates that  
26  
27 City Council will appropriate \$4.8M each year for waterfront operation, it does not bind any  
28  
29 future city councils or guaranty funding. 6/26/2020 Hrg. Tr. at 12:7-20; 15:2-10.<sup>3</sup> And if  
30  
31 the City fails to appropriate that baseline funding, there is an option to suspend or terminate  
32  
33 the maintenance agreement. *Id.* at 13:4-14:2.  
34

35 11. There was also no consideration of negative impacts from another four-plus  
36  
37 years of construction (at least). Mr. Macaulay reasoned that construction impacts are not  
38  
39 compensable in eminent domain cases. However, there is nothing in the LID statutes or case  
40  
41 law allowing him to dismiss these actual, non-speculative impacts. Because future special  
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45 <sup>3</sup> The Examiner suggests that the issue of whether future City Councils are bound is not at issue.  
46 However, the issue of maintenance was part of Mr. Macaulay's special benefit analysis and therefore  
47 the assessment amounts.

1 benefits calculations are inherently speculative, Washington's eminent domain statute  
2 specifically allows condemnees to postpone special benefits assessments until improvements  
3 are in place. RCW 8.25.220; *State v. Green*, 90 Wn.2d 52, 56, 578 P.2d 855 (1978).  
4

5  
6 Moreover, the studies that Mr. Macualay relied on demonstrate that construction disamenity  
7 is real and does have a near-term negative effect on property values. *See* Gibbons Decl. ISO  
8 Closing Stmt. (dated 7/7/2020), Ex. C at 24 (during construction of Rose Kennedy  
9 Greenway, the Greenway district "significantly" lagged in value). For these reasons,  
10 Taxpayer appeals the following portions of the Examiner's Recommendation: Sections  
11 II.25, IV.B.8, and IV.B.9.  
12

13  
14 12. Special benefit estimate is speculative. When calculating a special benefit,  
15 "[f]air market value cannot include a speculative value." *Bellevue Plaza, Inc.*, 121 Wn.2d at  
16 411. "When an appraiser uses a factor 'beyond the knowledge of reasonable certainty', it  
17 becomes pure speculation." *Id.* (quoting *In re Local Imp.* 6097, 52 Wn.2d 330, 335–36, 324  
18 P.2d 1078 (1958)).  
19

20  
21 13. Assuming without conceding that one day, the City's planned LID  
22 Improvements might increase the value of neighboring properties to some extent, that  
23 potential benefit is many years away and speculative. While appraisers tolerate some degree  
24 of estimation and judgment, Taxpayer's expert testified that Mr. Macaulay's Final Study is  
25 far too speculative to satisfy industry practices and standards.  
26

27  
28 14. Although LIDs are sometimes finalized prior to completion of improvements,  
29 this is typically just six month or a year prior, and the assessments are otherwise supported  
30 by the near-term construction of the improvements. *See* 3/3/2020 (A. Gibbons) Hrg. Tr. at  
31 117:20-118:9; 119:5-120:9; 122:15-124:9. By contrast, the estimated special benefits here  
32 will not be realized for four or five years. In the meantime, there is permitting risk,  
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1 construction risk, and general economic risk (e.g., COVID), which renders ABS's 2019  
2 hypotheticals inherently speculative and unreliable because it is impossible to predict which,  
3 and to what extent, different factors will impact value. *Id.* at 51:13-53:5. Ultimately, Mr.  
4  
5 Macaulay concedes that there is inherent uncertainty in valuing the future delivery of  
6  
7 projects because "we can't read the future." 6/23/2020 Hrg. Tr. at 79:18-80:8. As he  
8  
9 testified: "I just don't know what the market value would be as of the date the project would  
10  
11 be finally constructed" because "[t]here could be a lot of elements in the market that did  
12  
13 occur between now and then that impact value." 6/25/2020 Hrg. Tr. at 212:9-13; *see also id.*  
14  
15 at 211:8-20 (no way to know if his estimates will be higher or lower than comparable sales  
16  
17 in 2024 because "markets tend to fluctuate over time" and "I can't predict the future").  
18  
19

20  
21 15. The record is clear that while no one can know what "special benefit" might  
22  
23 accrue to these properties in four years (if any), we do know that there are no actual benefits  
24  
25 now. The LID improvements provide no immediate special benefit to property owners  
26  
27 because the bulk of the components are still in design stages. *Cf. Hasit*, 179 Wn. App. 917  
28  
29 (assessments calculated on a fundamentally wrong basis by including costs for an oversized  
30  
31 sewer system for future users). For example, notwithstanding the questionable hypothesis  
32  
33 that apartments will benefit from an expected increase in tenant interest when the  
34  
35 improvements are complete, it is undisputed that tenants are not coming in larger numbers  
36  
37 and paying higher rental rates now because of something happening five years down the  
38  
39 road. See O'Connor Decl. ISO Closing Stmt., ¶ 7 (dated 7/7/2020) (no apartment leased  
40  
41 today for 18 months would rent at a higher rate due to improvements coming in 2024).  
42

43 16. Further, there are no "plans and specifications" on file with the Clerk's Office  
44  
45 for the LID Improvements, and it is unlawful to move to final assessments without such  
46  
47 "plans and specifications." Ordinance 125760, Section 3; *Local and Road Improvement*



1 *Districts Manual for Washington State 6<sup>th</sup> Edition*, pp. 3, 19, 31, 44 (2009). It is also  
2  
3 unlawful to bind future City Councils and future budgets to spend hundreds of millions of  
4  
5 dollars on projects still early in the design process. *See* Washington Attorney General  
6  
7 Opinion 2012 No. 4 (May 15, 2012)); *cf. City of Seattle v. Rogers Clothing for Men, Inc.*,  
8  
9 114 Wn.2d 213, 787 P.2d 39 (1990) (assessment upheld because City has apportioned costs  
10  
11 of programs and included “only so much of the overall costs” that took place within and  
12  
13 benefitted the assessed properties).

14  
15 17. The COVID-19 crisis highlights how fundamentally speculative and unfair it  
16  
17 would be to base a special benefit assessment on twin 2019 hypotheticals for improvements  
18  
19 anticipated to be delivered five years later. Even before COVID, it was speculative to  
20  
21 assume that market highs experienced in October 2019<sup>1</sup> would be sustained through 2024,  
22  
23 after an already extraordinarily long expansion period. *See, e.g.*, 3/5/2020 (E. Leigh) Hrg.  
24  
25 Tr. at 119:15-123:6; 3/3/2020 (A. Gibbons) Hrg. Tr. at 117:6-118:9, 119:17-120:9. And Mr.  
26  
27 Macaulay conceded: “[W]hen I was doing my analysis in October 2019, who would have  
28  
29 thought that this COVID issue would happen?” 6/23/2020 Hrg. Tr. at 80:3-8. At his  
30  
31 deposition in late February, his “thought process was that the market was going to continue  
32  
33 to go up,” but now, they are already irrelevant. *Id.*; *see* Gibbons Decl. ISO Closing Stmt. at ¶  
34  
35 12 (dated 7/7/2020). Although COVID does not change actual values as of October 2019  
36  
37 (*see* Examiner’s Recommendation at 109), the pandemic has impacted *current* values and  
38  
39 rendered the hypothetical October 2019 Final Study valuations outdated.

40  
41 18. As another example of how future events could affect the accuracy and  
42  
43 reliability of the City’s 2019 proposed assessment, Taxpayer recently requested the Hearing  
44  
45 Examiner re-open the record to allow the City to explain whether the assessments against  
46  
47 property owners within the LID are, in fact, being used by the City to fund the emergency

1 dismantling and reconstruction of Pier 58.<sup>4</sup> It has been reported that the City plans to use  
2 LID funding to pay for the expedited, emergency repairs and replacement.<sup>5</sup> If true, the City  
3 would be improperly imposing costs on property owners within the LID for improvements  
4 that are required to maintain the safety of Pier 58 and to remove a threat to critical salmon  
5 habitat and City infrastructure—this does not provide any special benefit to LID property  
6 owners.  
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12 19. There is also no certainty the improvements will be delivered on time. Mr.  
13 Foster testified that 2024 is not a hard deadline for delivery of the improvements, and a  
14 delay in construction schedule would not constitute a “material change” under the City  
15 Council’s ordinance authorizing the improvements. In other words, the City cannot  
16 guarantee that the LID Improvements will be delivered as expected in 2024 or any time after  
17 that. 6/26/2020 Hrg. Tr. at 18:5-13. Meanwhile, Taxpayer’s experts Reid Shockey and  
18 Richard Shiroyama testified via declaration as to the City’s permitting gauntlet, and  
19 potential delays and project changes inherent in those processes, that call into question the  
20 assumption that the City can deliver the LID Improvements by 2024. Hrg. Exhibits 110  
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33 <sup>4</sup> Associated Press, *Seattle mayor approves ‘emergency dismantling’ of waterfront Pier 58* (King  
34 5, Aug. 15, 2020), available at <https://www.king5.com/article/news/local/seattle/seattle-mayor-approves-emergency-dismantling-of-waterfront-pier-58/281-f6b7c7d0-78f2-4826-97c8-0b60d4097aa3>; See Aug. 21, 2020 Memo from R. Holtz et al. to L. Arber re HPA Request for Pier  
35 58 (Waterfront Park) Emergency Demolition Project, available at  
36 <https://www.govonlinesaas.com/WA/WDFW/Public/EnSuite/Shared/pages/util/StreamDoc.ashx?query=UxFpa3XqI8020u5QdaIfpJXX0C+FfKT5/OpyMkto74=>; see also Aug. 13, 2020 Ltr. from H.  
37 Burton to D. Graves et al. re Review of Pier 58 Movement Observation Report & Recommendations,  
38 available at  
39 <https://www.govonlinesaas.com/WA/WDFW/Public/EnSuite/Shared/pages/util/StreamDoc.ashx?query=EvGV09Syk1HCKYhwoN5Gqo5VpGOK5QBr3KFzTsfO4Lw=>.  
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45 <sup>5</sup> Asia Fields, *‘Substantial’ pier shift closes Seattle’s Waterfront Park* (Seattle Times, Aug. 8,  
46 2020), available at <https://www.seattletimes.com/seattle-news/substantial-pier-shift-closes-seattles-waterfront-park/>.  
47

1 (Shockey Decl., dated 4/15/2020); 111 (Shiroyama Decl., dated 4/15/2020); 107 (Anderson  
2 Decl., dated 4/15/2020).  
3

4  
5 20. Unsurprisingly, of the over one hundred LIDs Mr. Macaulay has worked on,  
6 he could not point to a single one where the assessment roll was finalized five years in  
7 advance of the anticipated project completion. *See* 6/23/2020 Hrg. Tr. at 16:1-22. Likewise,  
8 he has never recommended final special assessments based on designs less than 30 percent  
9 complete, other than in this case. *Id.* at 17:22-18:2. Nevertheless, he proceeded with his  
10 2019 hypothetical before, hypothetical after analysis because the City “wanted to get  
11 moving ahead with the project” and gave him assurances that designs would not change. *Id.*  
12 at 66:17-25. He performed no independent due diligence to determine the reliability of the  
13 City’s estimates for completion of the LID Improvements, or to ensure that proposed  
14 designs or cost estimates were not going to materially change. *Id.* at 78:14-79:13. Yet he  
15 agreed that if any of his assumptions are incorrect, his opinion of market value would need  
16 to be revised. 6/23/2020 Hrg. Tr. at 68:19-69:8; *see also id.* at 64:13-65:12; 67:10-16;  
17 68:11-18.  
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30 21. The City has cited no authority—and Taxpayer is aware of none—that  
31 affirms the use of hypothetical, anticipatory Before and After values in order to estimate and  
32 assess taxes for “actual” special benefits that will not accrue for another five years (if all  
33 goes off without a hitch). To the contrary, the hypothetical assumption that all of the Before  
34 and After Improvements are constructed as of October 1, 2019 allows Mr. Macaulay to base  
35 his estimates on “pure speculation.” *Bellevue Plaza, Inc.*, 121 Wn.2d at 411. For these  
36 reasons, Taxpayer appeals the following portions of the Examiner’s Recommendation:  
37 Sections II.6, II.7, II.33, IV.B.1, IV.B.2, IV.B.3, IV.B.5, IV.B.6, IV.B.11(c), IV.C.12,  
38 IV.C.14, and IV.C.18.  
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1           22.     Failure to discount special benefit estimates to account for risks and present  
2     value. Due to the inherent uncertainty, Taxpayer's expert opine that the Final Study should  
3     have accounted for risks associated with delivery of the improvements (including permitting  
4     risk, construction risk, general economic risk) and any special damages associated with  
5     interim construction. 3/3/2020 (A. Gibbons) Hrg. Tr. at 119:17-120:9, 59:20-60:20. In  
6     addition, as is typical appraisal practice, Mr. Macaulay should have discounted the  
7     anticipated 2024 benefit to account for the time value of money. *Id.* at 54:17-55:1; *see also*  
8     Gibbons Decl. ISO Closing Stmt., ¶ 13, 16 (dated 7/7/2020) ("Appraisers routinely consider  
9     the impact of future conditions [through] discounted cash flow analysis.").

10           23.     Mr. Macaulay acknowledged that appraisers can discount the value of a  
11     future condition not in place at the date of valuation and can discount for the time value of  
12     money. 6/23/2020 Hrg. Tr. at 74:1-75:1. And he agreed that if improvements are not built  
13     until 2024, "[y]ou would be discounting it back to a present value." *Id.* at 77:2-19.  
14     Discounting would also have been consistent with his approach for analyzing special  
15     benefits to vacant land. He testified that the difference between similarly situated vacant  
16     sites slated for development and already developed sites was that the labor, capital and risks  
17     associated with development had not yet been borne for those vacant sites. Therefore, the  
18     vacant land was not valued as highly and received a smaller assessment. 6/19/2020 Hrg. Tr.  
19     at 28:1-13; *see also* 6/18/2020 Hrg. Tr. at 205:9-12. *A fortiori*, a project that has not been  
20     fully permitted, has not completed environmental review, and has not reached full design is  
21     presently worth significantly less.

22           24.     The City's hotel expert, Mr. Lukens, likewise explained that to calculate  
23     present value, an appraiser would consider discount rates for land development to account  
24     for inflation, entitlement risks, cash flow issues, construction, etc. 6/26/2020 Hrg. Tr. at

1 184:5-185:22. And Mr. Lukens agreed that it would be reasonable for an appraiser to refer to  
2 the PricewaterhouseCoopers Korpacz study for applicable discount rates. *Id.* at 187:18-  
3  
4 189:23; *see also* Gibbons Decl. ISO Closing Stmt, ¶ 17 (dated 7/7/2020).  
5

6 25. Applying the Q19 Korpacz rates and assuming *arguendo* that Macauley's  
7 total estimated special benefit is correct, \$447,908,000 discounted to 2019 present value for  
8 raw land to be developed by 2024 is approximately \$153,600,000. *See* Gibbons Decl., ¶ 17,  
9 Ex. A. Notably, this is lower than the City's proposed \$171,000,000 assessment. Thus,  
10 ignoring momentarily all of the other methodological and other flaws discussed here and in  
11 Taxpayer's case-in-chief, and assuming that the LID Improvements provide special benefits  
12 as soon as they are complete in 2024, Mr. Macaulay's hypothetical assessment materially  
13 exceeds special benefits when reduced to present value. Further, to the extent the City is  
14 arguing that because they are permitted to assess 100% of the special benefit, the special  
15 benefit estimate can be off by 60.8% because they only assess 39.2% of that benefit, the City  
16 is again wrong. After applying proper discounting, the City's proposed special benefit  
17 assessment is far more than 39.2% of the total estimated special benefit, and in fact exceeds  
18 100% of the total estimated special benefit.  
19  
20

21 26. But even the assumption that the LID improvements would deliver benefits  
22 as soon as they were complete in 2024 is not supported by the studies Mr. Macaulay relied  
23 on. Rather, those studies demonstrate that a discount period of five years is conservative.  
24 *See* Gibbons Decl. ISO Closing Stmt., ¶ 18 (dated 7/7/2020). In particular, HR&A's study  
25 on the Rose Kennedy Greenway in Boston (included in Mr. Macaulay's backup files)  
26 indicates that during the construction period, the Greenway district "significantly" lagged in  
27 value (i.e., construction disamenity). *Id.*, Ex. C at 24. That study also recognized that the  
28 "reorientation of development to capture value takes time"—specifically, 12-13 years. *Id.* at  
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1 30-31 (discussing New York City High Line and San Francisco Embarcadero  
2 improvements). Given the lengthy delay, any prediction of future special benefits is  
3 speculative, especially during the construction phase where values are likely to decline. And  
4 assuming the LID Improvements take a similarly long period of time after they are complete  
5 to start producing tangible property value benefits, each additional year of delay results in  
6 further discount to the present value of any future alleged benefit. Gibbons Decl. ISO  
7 Closing Stmt., ¶ 19, Ex. A.  
8

9  
10 27. Applying the same discounting methods described above and in Mr. Gibbons  
11 declaration, the 2019 net present value of ABS's estimate for benefits that actually start  
12 accruing in 2029 is just \$42,204,597, only 9.4% of the benefits ABS hypothesized, even  
13 before applying the 39.2% percentage assessment. *Id.* For Taxpayer, this means at most the  
14 100% assessment should be no more than \$424,936.20. Anything more would permit the  
15 City to assess Taxpayer based on a hypothetical assumption that these improvements are in  
16 place and providing benefit, and ignore the risks, construction disamenity, and time value of  
17 money that normal appraisal principles would take into account. *Id.*, ¶ 20. Proportionality  
18 would counsel that the assessment should be only 39.2% of that assessment cap, or  
19 \$166,574.99.  
20

21 28. Attachment C includes two Excel spreadsheets applying these discounting  
22 methods to Taxpayer's assessment. It is undisputed that special benefits will not actually  
23 accrue until the LID Improvements are complete in 2024. Accordingly, the first spreadsheet  
24 demonstrates that discounting the City's hypothetical October 2019 special benefits to  
25 present value would reduce Taxpayer's assessment to \$606,410, exclusive of any other  
26 flaws in the City's proposed assessment. The second spreadsheet shows even more drastic  
27 reductions after taking into account (1) Taxpayer's exerts' estimated "Before" valued based  
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1 on actual data from Taxpayer; (2) a rough discount for property value loss due to COVID-  
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3 19; and (3) discounting to present value for 5 years (*i.e.*, from 2024 when the City  
4  
5 anticipates completing the LID Improvements) and 10 years (*i.e.*, from 2029 to account for  
6  
7 the time it takes for the improvements to capture property value.) After such reductions,  
8  
9 Taxpayer's assessment would be just \$465,940 (for the 5-year discount) or \$128,025 (for the  
10  
11 10-year discount). Neither of these spreadsheets address other issues raised by Taxpayer's  
12  
13 appeal, but are intended to help demonstrate how unfair and inflated the City's proposed  
14  
15 hypothetical assessment is. The Hearing Examiner's Recommendation simply dismisses  
16  
17 Taxpayer's discounting argument without legal or factual analysis; that failure is error.

#### 18 **Appraisal and Assessment Calculation Methods Are Flawed**

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21 29. The "general rule is that each lot, piece, or parcel of land should be assessed  
22  
23 separately" for purposes of local improvement district special assessment. *Doolittle*, 114  
24  
25 Wn.2d at 97.

26  
27 30. It is proper to sustain a challenge to an assessment, even without the appraisal  
28  
29 testimony from the owner, where the objector's expert establishes that the assessment was  
30  
31 "clearly grounded upon a fundamentally wrong basis" due to an error in the method  
32  
33 employed by the City's appraiser. *See, e.g., Doolittle*, 114 Wn.2d at 106.

34  
35 31. The City's appraiser purports to utilize the income method of valuation but  
36  
37 relied on inaccurate revenue and market data, as discussed further below.

38  
39 32. The City's appraiser purports to utilize the comparable sales method of  
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41 valuation, but no City witness attempted "to characterize any one, or all of them, as  
42  
43 comparable to [Taxpayer's property]." *See Bellevue Plaza*, 121 Wn.2d at 406 (finding  
44  
45 "several serious flaws" in ABS's LID analysis in that case, including that the appraiser  
46  
47 "attache[d] a list of a number of land sales within the CBD, but ma[de] no attempt to

1 characterize any one, or all of them, as comparable to any particular property within the LID”).  
2  
3 And no City witness could explain how specific adjustments were made to these sales to  
4  
5 account for value increases due to the hypothesized Before and After Improvements. For this  
6  
7 reason, Taxpayer appeals Section II.23 of the Examiner’s Recommendation.  
8

9       33. Special assessment improperly includes value lift from the Before  
10 Improvements. Mr. Macauley is required to exclude (and claims to have excluded) any  
11  
12 assessment based on value attributable to demolition of the viaduct and the planned WSDOT  
13  
14 Improvements, which WSDOT had independently committed to fund. However, Mr.  
15  
16 Macauley did not calculate the actual market value of LID properties in October 2019 and  
17  
18 did not separately analyze the hypothetical increase to property values attributable to  
19  
20 WSDOT’s planned improvements. *See* 6/23/2020 Hrg. Tr. at 41:11-18 (did not estimate a  
21  
22 current value and then separately calculate a hypothetical “With WSDOT” Before value);  
23  
24 *see also* Gibbons Decl. ISO Closing Stmt., ¶ 8 (dated 7/7/2020); *see also* Gibbons 1/30/2020  
25  
26 Letter (attached to Appeal Petition) at 4; Gibbons 5/2/2018 Letter (attached to Appeal  
27  
28 Petition) at 3-4. Without any documented basis or support, Mr. Macauley simply “ma[de] a  
29  
30 judgment a call” on what occupancy and rates would have been for the commercial  
31  
32 properties assuming all of the WSDOT Improvements are completed as of 2019. Macauley  
33  
34 Depo. at 129:19-130:11. For example, Mr. Macauley surmised that Brian O’Connor’s  
35  
36 conclusion that the “Before” value for Harbor Steps was overstated by \$88M was perhaps  
37  
38 due to the fact that Mr. O’Connor was looking at current income numbers and not  
39  
40 accounting for the value of the “Before” conditions. However, when asked whether the  
41  
42 value of the of the “Before” conditions is lower or higher than \$88M, Mr. Macauley had no  
43  
44 clue because he did not do this analysis. 6/23/2020 Hrg. Tr. at 46:9-17:25. This outright  
45  
46 omission precludes any independent evaluation of the true market “Before” values. *See*  
47



1 6/23/2020 Hrg. Tr. at 44:25-45:9. It also fails to meet professional appraisal standards; if an  
2 appraiser uses current sales data to infer values, then the appraiser must explain how he  
3 analyzed that data and other information to come up with the hypothetical value. 3/3/2020  
4 (A. Gibbons) Hrg. Tr. at 128:1-130:4. This includes not just removal of the viaduct, but also  
5 other road, pedestrian and landscaping improvements WSDOT had already committed to  
6 make.  
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12 34. However, because Mr. Macaulay testified that he did include some WSDOT-  
13 related value-lift in the “Before” values, it follows that part of the special assessment  
14 improperly is based on value attributable to the WSDOT Improvements. As shown by  
15 mathematical formulas in his spreadsheets, Mr. Macaulay applies a special benefit  
16 percentage to Before values. So, for example, if Mr. Macaulay believed the WSDOT  
17 Improvements would add \$10,000,000 in value, then his method of analysis assuming a 3%  
18 special benefit assignment would result in \$300,000 of over-assessment. *See* Gibbons Decl.  
19 ISO Closing Stmt., ¶ 9 (dated 7/7/2020). At a minimum, the Final Study should be redone  
20 to properly exclude the value of Before Improvements from the assessments. For these  
21 reasons, Taxpayer appeals the following portions of the Examiner’s Recommendation:  
22 Sections II.19, II.29, and IV.B.11(a)(ii)  
23

24  
25 35. Special benefits were assigned rather than measured. Mr. Macaulay  
26 arbitrarily “assigns” special benefits to Before values instead of measuring them for each  
27 property. *See* 1/30/2020 Gibbons Letter (attached to Appeal Petition); 3/5/2020 (B.  
28 O’Connor) Hrg. Tr. at 147:10-149:21; 3/3/2020 (A. Gibbons) Hrg Tr. at 88:25-89:3; 90:8-  
29 91:13. Based on formulas in spreadsheets that Mr. Macaulay used to analyze the  
30 commercial properties, Taxpayer’s experts concluded that Mr. Macaulay based adjustments  
31 on hypothesized very small increases to property revenue and very small reductions to cap  
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1 rates to “calculate” an “After” value due to the coming 2024 LID Improvements.

2 Attachment B (ABS Spreadsheet). These series of micro adjustments were based on  
3  
4 “professional judgment” that are neither shown nor replicable.  
5

6 36. For these reasons, Taxpayer appeals the following portions of the Examiner’s  
7  
8 Recommendation: Sections II.19, and IV.B.11(a)(iii).  
9

10 37. Special benefit falls within margin of error. The Final Special Benefit Study  
11  
12 applies an estimated value enhancement of less than 4%, which is generally within the  
13  
14 margin of error for appraisals and, therefore, not a reliable difference. *See Bellevue Plaza,*  
15  
16 *Inc.*, 121 Wn.2d at 401 (must substantiate use of percentages when allocating assessments).  
17  
18 Taxpayer’s experts explained that if two appraisers independently arrive at values within 5%  
19  
20 of one another, this difference is considered reasonable as it falls within the standard margin  
21  
22 of error accepted in the profession. 3/3/2020 (A. Gibbons) Hrg. Tr. at 164:2-9; 3/5/2020 (B.  
23  
24 O’Connor) Hrg. Tr. 201:7-204:8. Because Mr. Macaulay’s micro-special benefit percentages  
25  
26 fall far below that 5% margin, “there is no way of authenticating” such incremental changes  
27  
28 because “[m]arket forces completely obliterate any tiny little noise factor like that.” *See*  
29  
30 3/3/2020 (A. Gibbons) Hrg. Tr. at 160:23-161:5. Mr. Macaulay agreed during his deposition  
31  
32 that 0.25% is too small to measure. Macaulay Depo. at 25:17-25. Additionally, the fact that  
33  
34 “Before” values are also based on a hypothetical that adds some unstated incremental value  
35  
36 to actual 2019 values exacerbates this issue—the ability for an appraiser to discern the  
37  
38 micro-value differences between hypothetical conditions that are so similar (the WSDOT  
39  
40 improvements compared to the LID improvements) “verges on being ludicrous.” 3/3/2020  
41  
42 (A. Gibbons) Hrg. Tr. at 89:4-90:7.  
43

44 38. Even if it were possible to accurately tease out such a miniscule hypothetical  
45  
46 value change due to improvements coming five years later, experts testified that there is no  
47

1 data to justify the mathematical adjustments—they are just the appraiser’s guesses as to  
2  
3 what he felt the changes (hypothetically) would be. *See* 3/3/2020 (A Gibbons) Hrg. Tr. at  
4  
5 88:21-88:24 (“you cannot measure one percent difference in a high-rise building for this  
6  
7 kind of a medium ... it’s simply assigned to a before value”). For these reasons, Taxpayer  
8  
9 appeals the following portions of the Examiner’s Recommendation: II.27 and IV.B.4.

10  
11 39. No analysis of value increase attributable to individual components of the  
12 LID Improvements. The Final Special Benefit Study lacks clarity to fairly estimate a small  
13  
14 percentage difference between hypothetical Before and After conditions. Throughout his  
15  
16 testimony, Mr. Macaulay could not explain what benefit arose from specific Before/After  
17  
18 descriptions in the Addenda even though he testified that he relied on these to calculate  
19  
20 special benefits. 6/23/2020 Hrg. Tr. at 26:21-30:10. When asked where in his report  
21  
22 someone might be able to determine how he attributed value to After conditions described in  
23  
24 the Addenda, he answered that that was “not the scope of the assignment” because he was  
25  
26 asked to look at all of the projects as a whole. 6/23/2020 Hrg. Tr. at 30:3-8. But he admitted  
27  
28 that the six components were not actually a continuous project, that he was viewing them  
29  
30 together because the City asked him to, and that if he were to view them independently,  
31  
32 there was a low probability that properties in the north would specially benefit from  
33  
34 improvements in the south and vice versa. *See* 6/25/2020 Hrg. Tr. at 27:18-28:5.

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37 40. Not only did he fail to analyze benefits from each of these non-contiguous  
38  
39 improvements, his familiarity with descriptions as whole was tenuous at best. *See, e.g.,*  
40  
41 6/23/2020 Hrg. Tr. at 26:21-30:10 (Mr. Macaulay could not explain what specific benefit  
42  
43 arose from specific Before/After descriptions in the Addenda); *cf. Anderson v. City of*  
44  
45 *Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (deprivation of due process where building design  
46  
47 objectives that guided regulators’ assessment of architectural plans for buildings along a

1 “signature street” were so vague that they amounted to ad hoc review based on the  
2 regulators’ subjective impressions and feelings).<sup>6</sup> It became clear through his testimony that  
3 even though he used the renderings as “visual aid[s] in appraising the property in the before  
4 and after” to “visually see what the differences would be,” he could not explain what  
5 specific elements in the visuals added or reduced value. *Id.* at 36:3-39:12. For example,  
6 when shown a rendering of a two-lane road going down to one-lane in the After condition  
7 near the Pike Street Market, he dismissively reasoned there would be no potential impact on  
8 traffic because cars could still technically get through. *Id.* at 171:11- 173:11. When shown a  
9 rendering of street improvements on Pike/Pine, he posited absurdly that seasonal variation  
10 could explain the depiction of the same trees in the After condition nearly twice as tall as in  
11 the Before. *Id.* at 173:17-175:4. For these reasons, Taxpayer appeals the following portions  
12 of the Examiner’s Recommendation: II.27 and IV.B.4.  
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24 41. Special assessment is not supported by comparable studies, data or reports.

25 Mr. Macaulay’s references to empirical research do not justify his fundamental assumption  
26 that the LID Improvements will lead to meaningfully increased real estate values for  
27 Taxpayer. Indeed, no City witness was able to explain how ABS Valuation used  
28 comparable sales or information from the “over twenty-five studies and reports” to arrive at  
29 very precise special benefit increases for residential and commercial combined properties,  
30 including Taxpayer’s property. For example, although Mr. Macaulay stated that no single  
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41 <sup>6</sup> As an aside, this admission suggests that there should have been an explicit City Council  
42 finding that properties within the LID would benefit from the improvements as a whole. *See* RCW  
43 35.43.050. Without this finding, the cost and expense of each component must “be ascertained  
44 separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and  
45 expense of each unit.” *Id.* In other words, Mr. Macaulay should have estimated the benefit to each  
46 property from each component separately, consistent with the law and in recognition of his testimony  
47 that not all properties benefit from all components.

1 report or study was directly on point due to the unique nature of the LID Improvements (*see*,  
2 *e.g.*, 6/25/2020 Hrg. Tr. at 146:21-147:8), he could not explain how he made specific  
3 adjustments in his parcel-by-parcel analysis other than to say that the studies generally  
4 provided “some background to base decisions on.” *See* 6/23/2020 Hrg. Tr. at 161:5-162:12;  
5 *see also* 6/26/2020 Hrg Tr. at 118:7-19 (did not make any specific adjustments to account  
6 for similarities and differences between these improvements and the comparable parks he  
7 looked at).  
8

9  
10 42. Mr. Macaulay purports to rely on Dr. Crompton’s research to justify the  
11 assignment of incremental increase of 0.5% to 4% to property values within the LID.  
12 However, among other critiques, Dr. Crompton testified that Mr. Macaulay’s reliance on his  
13 research misinterprets his work in critical ways, including because the LID Improvements  
14 manifest the characteristics of a parkway (not a park), and his research indicates that most of  
15 a *park*’s impact on single-family home values occurs within a 500-foot range (or 1.5 blocks  
16 in Seattle). *See* Hrg. Exhibit 94 (Crompton’s report). Further, updated research shows park-  
17 related value increases are in fact smaller; that estimated increases are “best guesses” rather  
18 than predictions of property value increases in a particular city; and that percentages do not  
19 account for diminishing returns after taking into account water views, which would be the  
20 driving value enhancer. The latter is especially true in a city like Seattle where the sloping  
21 topography grants most properties in downtown a water view.  
22

23 43. Rather than addressing Dr. Crompton’s critiques, Mr. Macaulay simply states  
24 that this was just one source of information that was not entirely relevant because, among  
25 other things, Dr. Crompton’s research dealt with parks and not streetscapes. However, Dr.  
26 Crompton’s critiques were based on Mr. Macaulay’s own testimony that the core “park”  
27 improvements are the Promenade, Overlook Walk, and Pier 58. Macaulay Depo. at 178:15-  
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1 180:2 (explaining that for purposes of “drawing boundaries around a park” he was  
2 considering only at Overlook Walk, Promenade, and Pier 58). Based on this testimony, Dr.  
3  
4 Crompton concluded that 500 feet via road from “park” improvements is just one or two  
5  
6 Seattle blocks and that Mr. Macaulay “inappropriately extend[ed] the LID impact  
7  
8 significantly beyond that which the park study indicated (even if it was legitimate to use the  
9  
10 park review’s findings).” Hrg. Exhibit 94 (Crompton’s Report) at 7. Indeed, the LID area  
11  
12 extends even past 2,000 feet from the core “park” improvements, which is the outer limit of  
13  
14 impact applicable to “community parks”—which the LID Improvements are not. *Id.*

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16 44. Further, Mr. Macaulay’s testimony that he analyzed streetscapes, parkways,  
17  
18 greenways, and park-amenities separately contradicts his insistence that he viewed all of the  
19  
20 six LID components together as one entity. *See* 6/23/2020 Hrg. Tr. at 167:15-180:16. And  
21  
22 based on the attention given to Dr. Crompton’s work in the Final Study and supporting  
23  
24 materials, it was clearly an important—if not *the* most important—source of information for  
25  
26 estimating special benefits (especially with respect to the condos).<sup>7</sup> No City witness  
27  
28 adequately explained exactly how Dr. Crompton’s research informed ABS Valuation’s  
29  
30 parcel-by-parcel analysis.  
31

32  
33 45. The destination parks discussed in the Final Special Benefit Study do not  
34  
35 provide reliable, comparable, and valid support for the calculation of special assessments  
36  
37 here. *See* Gibbons 5/2/2018 Letter at 4. None of the parks cited in the Final Special Benefit  
38  
39 Study were funded by a LID. And in virtually all of those cases, the park improvements  
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41  
42 <sup>7</sup> Of the 62 files in Mr. Macaulay’s “2019 Report Info” folder, which he explained contains all of  
43 the studies he relied on to prepare the Final Study (*see* Hrg. Exhibit 122 at ¶ 12; 6/23/2020 Hrg. Tr.  
44 at 152:10-154:18), 10 are authored by Dr. Crompton and 9 cite Dr. Crompton. Further, it appears  
45 Dr. Crompton’s study is the only one that found property value increases up to 2,000 feet from a  
46 park (or streetscape) improvement—other studies estimated premiums for real estate only much  
47 closer or cited to Dr. Crompton.

1 dramatically restored unimproved or blighted areas, and properties evaluated were within  
2  
3 two or three blocks of the park.

4  
5 46. ABS's claimed reliance on three economic studies to support property value  
6 increase is also flawed. The HR&A study does not inform what value increases are  
7  
8 expected from the LID Improvements because it projects increases to tourism from *all* of the  
9  
10 Waterfront Projects (not just those funded by the LID) and is based on tourism data from  
11  
12 dissimilar parks in other cities,<sup>8</sup> making the methodological application to the LID  
13  
14 speculative. Further, Mr. Macaulay appears to have selectively ignored the HR&A Study's  
15  
16 conclusion that there would be *no new net visitors* from downtown residents as a result of  
17  
18 the LID Improvements and could not explain how this impacted his condo analysis.  
19  
20 6/25/2020 Hrg. Tr. at 152:15-153:21. The Texas A & M study on "The Impact of Parks on  
21  
22 Property Values" primarily focused on whether the benefits accrue to the larger community  
23  
24 rather than properties adjacent to the park. And the 2014 New York City Department of  
25  
26 Transportation study is not based on real estate transactions and market sales and fails to  
27  
28 substantiate any link between increased retail sales and property values. Moreover, this  
29  
30 study only looked at impact either directly abutting the streetscape improvement, or a couple  
31  
32 hundred feet for plaza-like improvements.  
33

34  
35 47. Meanwhile, Mr. Macaulay decided not to include the Trust for Public Lands  
36  
37 (TPL) Study in the Final Report even though it is Seattle-specific. *Id.* at 171:21-17; Hrg.  
38  
39 Exhibit 124. One explanation of that this omission could be TPL's estimate of the economic  
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43 <sup>8</sup> These included distinct destination parks like Golden Gate Park, Hudson River Park, Rose  
44 Kennedy Greenway, and Millennium Park where tourist "capture rates" varied from 5% (Rose  
45 Kennedy Greenway in Boston) to 44% (Golden Gate Park in San Francisco). Further, the calculated  
46 expected tourists visiting the LID park was calculated using data from only from New York City, a  
47 notorious tourist destination.

1 impact of the *whole park system* on the Seattle economy is much lower—\$30 million as  
2 compared with HR&A’s estimate of \$191 million for just the waterfront improvements, and  
3 thus would counsel a much lower assessment. Hrg. Exhibit 124 at 3. Regardless, when  
4 asked whether he considered that HR&A’s estimated LID impact is six times greater than  
5 TLP’s assessment of Seattle’s entire park system, his surmised that it was because the  
6 HR&A Study came out in 2019, whereas the TPL Study came out in 2011. *See* 6/23/2020  
7 Hrg. Tr. at 172:19-173:10. But, he did not do any additional analysis and did not adjust his  
8 assumptions to account for this difference, which may be partly explained by the fact that  
9 the TPL study is Seattle-specific. *Id.* at 173:11-174:1. The TPL Study also estimated that  
10 approximately 3.44% of King County tourists visit Seattle primarily because of the city  
11 parks, whereas HR&A estimated that 55% of visitors would visit primarily because of the  
12 waterfront improvements.

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25 48. Although proximity to the improvements is a key factor in all of these  
26 studies, Mr. Macaulay could not explain in what circumstances he measured distance as the  
27 crow flies or via travel routes. *See* 6/23/2020 Hrg. Tr. at 180:17-182:19. And he seemed to  
28 not understand that for both the Trust for Public Lands study and Dr. Crompton’s study,  
29 benefits extending out 2,000 feet were only observed for community parks that exceeded 40  
30 acres. *See* 6/25/2020 Hrg. Tr. at 145:2-21. By contrast, the total size of the LID  
31 Improvements is approximate 20 acres and it is not a community park.<sup>9</sup>

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39 49. There is no explanation in the Final Study or the supporting materials of how  
40 the studies or comparable sales were used to derive values for Taxpayer’s property. For  
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44  
45 <sup>9</sup> *See*  
46 [https://waterfrontseattle.blob.core.windows.net/media/Default/pdf/2019\\_0208\\_Waterfront\\_LID\\_FA\\_Qs\\_Final.pdf](https://waterfrontseattle.blob.core.windows.net/media/Default/pdf/2019_0208_Waterfront_LID_FA_Qs_Final.pdf) (“Waterfront Seattle will create about 20 acres of improved parks and public spaces  
47 connecting Seattle’s central waterfront to downtown.”).



1 these reasons, Taxpayer appeals the following portions of the Examiner's Recommendation:  
2  
3 Sections II.18, II.20, II.21, II.22, II.23, II.24, II.26, II.30, II.32, and IV.C.5.

4  
5 50. Failure to comply with USPAP. Taxpayer's assessment also rests on a  
6  
7 fundamentally wrong basis due to the City's appraiser's decision to utilize a hybrid mass-  
8  
9 appraisal method. Randall Scott, a former mass appraiser responsible (and professionally  
10  
11 recognized) for developing the MAI standards for mass appraisals, testified that the Final  
12  
13 Study does not meet mass appraisal standards nor allow for independent assessment of the  
14  
15 accuracy of Mr. Macauley's conclusions.

16  
17 51. Specifically, because the parcel-by-parcel approach is not a mass appraisal,  
18  
19 Mr. Macaulay was required to comply with USPAP Standards 1 and 2 which govern direct  
20  
21 appraisals. *See* Decl. of Randall Scott ISO Closing Stmt., ¶ 4 (dated 7/7/2020). However,  
22  
23 the Final Study does not purport to comply with Standards 1 and 2. And Mr. Macaulay's  
24  
25 testimony suggests that he incorrectly believed that the only difference between direct  
26  
27 appraisals and mass appraisals is the reporting. *See* 6/23/2020 Hrg. Tr. at 207:7-208:12;  
28  
29 6/25/2020 Hrg. Tr. at 140:23-141:7 (explaining that he does not have to comply with  
30  
31 USPAP Standards 1 and 2 because he has not written an actual report on any condo unit); *id.*  
32  
33 at 205:8-14 (explaining that his mass appraisal simply uses "limited techniques, such as  
34  
35 Gordon uses in doing his limited restricted report").

36  
37 52. But the difference is not only in reporting—mass appraisal techniques must  
38  
39 instead comply with substantive standards in USPAP Standards 5 and 6. For example, as  
40  
41 Paul Bird (City's witness) testified, the mass appraisal approach is distinct from a parcel-by-  
42  
43 parcel approach:

44  
45 The mass appraisal technique is an appraisal method used to evaluate  
46  
47 a group of properties that are subject to similar market forces as of a  
certain date through the use of market data, statistical analysis and

1 testing. As a result, the mass appraisal technique does not require or  
2 involve analysis of each individual property's specific data.

3  
4 Second Decl. of Paul Bird ¶ 20 (dated 6/26/2020).

5  
6  
7 53. Indeed, USPAP's definition for "mass appraisal" is "the process of valuing a  
8 universe of properties as a given date using standard methodology, employing common data,  
9 and allowing for statistical testing." Appraisal Foundation, Uniform Standards of  
10 Professional Appraisal Practice at 5 (2020-2021). And the definition for "mass appraisal  
11 model" is "a mathematical expression of how supply and demand factors interact in a  
12 market." *Id.* Mr. Scott explains that a mass appraisal must use a model that is suitable for  
13 statistical testing—otherwise, there would be no way to assess the accuracy or validity of the  
14 mass appraisal. R. Scott Decl. ISO Closing Stmt., ¶ 4 (dated 7/7/2020).

15  
16  
17 54. Regardless of client direction, Mr. Macaulay is required to comply with  
18 USPAP. So, if, as he determined, a "[p]arcel-by-parcel direct appraisal" would not have  
19 been economically feasible because it would have taken "an incredible amount of time and  
20 cost" (6/18/2020 Hrg. Tr. at 125:15-10), then ABS Valuation should have conducted an  
21 appraisal consistent with USPAP Standards 5 and 6. *See also* Hamel Decl. at ¶ 8  
22 ("performing an individual appraisal of each [condo] parcel would have been cost and time  
23 prohibitive").

24  
25 55. But Mr. Macaulay's methods fail to comply with USPAP Standards 5 and 6  
26 because, *inter alia*, he fails to develop a model structure that reflects characteristics affecting  
27 value, fails to calibrate the model structure to determine the contribution of the individual  
28 characteristics affecting value, and does not review the mass appraisal results against actual  
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1 sales/data as a quality assurance/quality control check. *See* 3/3/2020 Hrg. Tr. at 216:18-  
2  
3 217:1;<sup>10</sup> Decl. of Randall Scott ISO Closing Stmt., ¶ 4 (dated 7/7/2020).

4  
5 56. Mr. Macaulay explained that factors like “aesthetic change in the area, the  
6  
7 proximity to the elements, the increase in market rent, market vacancy changes,  
8  
9 capitalization rate changes, and things of that nature” drove value increases. 6/23/2020 Hrg.  
10 Tr. at 211:14-212:3. But he could not specify how these factors were considered in his  
11  
12 “parcel-by-parcel” approach, and no one reviewing his work would have a clue. And he did  
13  
14 not calibrate his approach to determine how each factor contributes to value. *Id.* at 212:8-  
15  
16 213:5. As for reviewing the mass appraisal results, there were no criteria governing the  
17  
18 internal review process. *Id.* at 104:24-105:20. And because both the Before and After values  
19  
20 were hypothetical, it was not possible to identify matched pair sales and no City witness  
21  
22 explained how ABS Valuation made adjustments to “comparable” sales in order to check  
23  
24 their conclusions. Finally, Mr. Macaulay failed to comply with Standard 6 which requires  
25  
26 him to explain his model structure.  
27

28  
29 57. For these reasons, Taxpayer appeals the following portions of the Examiner’s  
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31 Recommendation: Sections II.28, II.31 and IV.C.8. In addition, Taxpayer renews Objectors’  
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35 <sup>10</sup> Standard 5 requires mass appraisals to develop a model structure that conceptualizes the  
36  
37 relationship between characteristics that affect value, and to calibrate that model to specify how  
38  
39 individual characteristics affect value. *See* USPAP Standard 5: Mass Appraisal, Development (2020-  
40  
41 21). The purpose is to rationally determine what characteristics will create value, and by how much.  
42  
43 This allows the mass appraiser to not only generate outputs, but also to test the reliability of the  
44  
45 model (and allow others to do so) by comparing the results of the model with actual sales. *See*  
46  
47 3/3/2020 (R. Scott) Hrg. Tr. at 197:7-15; 203:21-205:13 (explaining that it is typical to test output  
against actual sales). USPAP Standard 6 sets forth the mass appraisal reporting requirements, which  
include explanation of the model specification, data requirements, calibration methods, and  
mathematical form of the final model. *See* USPAP Standard 6: Mass Appraisal, Reporting at 6-2(i)-  
(o). Without this reporting, it is impossible for users of the appraisal report to determine how the  
appraiser determined value, and this omission renders the report not credible. *See* 3/3/2020 (R. Scott)  
Hrg. Tr. at 206:15-207:17.

1 Motion To Exclude The Expert Testimony of Robert J. Macaulay, filed on April 8, 2020,  
2  
3 and appeals the Examiner's denial of that motion.  
4

5 58. Finally, Taxpayer's property is not appurtenant—or even in close  
6 proximity—to any proposed improvements. *See Hasit*, 179 Wn. App. at 947 (“the burden of  
7 proving special benefit” shifted to the City because the protestors’ parcels merely stood “in  
8 close proximity to the property on which expert testimony was given”). As described above,  
9 the special assessment is overstated because the Final Study makes no attempt to determine  
10 general benefits, existing amenities for Taxpayer's specific property, or special detriments.  
11 In addition, it is speculative due to the fact that, as of October 2019, improvements were not  
12 in in place—and, in fact, much of the waterfront is a construction zone following removal of  
13 the viaduct and now Pier 58 demolition. Under these circumstances, rather than relying on  
14 entirely imaginary income and shaky hypotheticals, Mr. Macaulay at the very least should  
15 have discounted the special benefit estimates or waited to perform the Study until the  
16 improvements were at least close to complete.  
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### 28 **Erroneous Pre-Improvement Valuation**

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30 59. The proposed final assessment erroneously overstates the pre-improvement  
31 value of Taxpayer's property as of October 1, 2019 and, as a result, overstates the special  
32 benefit to the Taxpayer's property.  
33  
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36 60. The City's Final Study was used to compute the proposed final assessment of  
37 Harbor Steps' property. The City's Study purportedly uses data from the King County  
38 Department of Assessments,<sup>11</sup> but the pre-improvement valuation information in the Final  
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45 <sup>11</sup> *See, e.g.*, Final Special Benefit Study, “All Other LID Commercial Properties” Spreadsheet  
46 (providing a “County Link” to the King County Department of Assessment's online “eReal  
47 Property” search tool).

1 Study does not accurately reflect this data. For example, the City's Study values Harbor  
2 Steps' property at \$180,511,000 as of October 1, 2019. However, the King County assessor  
3 determined the true and fair value of the property to be \$185,880,000, valued in 2019 for tax  
4 year 2020. In other words, the Final Special Benefit Study's valuation is 97.1% of King  
5 County's assessed value. The Final Special Benefit Study does not explain this difference—  
6 or any differences—between its pre-improvement valuation and its supposed source for  
7 market data. For this reason, Taxpayer appeals Section IV.C.11 of the Examiner's  
8 Recommendation.  
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17 61. Further, the City's analysis was based on unreliable market data. The ABS  
18 appraisal overstated the combined total before market value for all four Harbor Steps'  
19 parcels by about \$88 million. B. O'Connor's Jan. 31, 2020 Report (attached to Appeal  
20 Petition), Ex. 6. Based on our expert appraiser's appraisal review, the true and fair value of  
21 the property here as of October 1, 2019 was \$158,511,000. *Id.* (Assuming equal value  
22 between all parcels).  
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29 62. Thus, aside from multiple other reasons why computation of the special  
30 benefits was flawed (discussed further below), the assessment is based incorrectly on pre-  
31 improvement values that do not accurately reflect market data. For these reasons, Taxpayer  
32 appeals the following portions of the Examiner's Recommendation: Sections II.13, II.14,  
33 and II.15.  
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### 38 **Erroneous Computation of Special Benefit**

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41 63. "Special benefit" is "the increase in fair market value attributable to the local  
42 improvements." *Doolittle*, 114 Wn.2d at 103. "A benefit that a particular piece of property  
43 may receive by reason of the improvement is not measured alone by the physical character  
44 or cost of that portion of the improvement upon which the property abuts. *La Franchi v. City*  
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1 of Seattle, 78 Wash. 158, 165, 138 P. 659, 662 (1914). “The question is: To what extent is  
2 the particular tract or property benefited by the entire improvement, and is it assessed  
3 proportionately with the other property included within the assessment district?” *Id.* 165–  
4  
5 66.  
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9 64. The proposed final assessment erroneously overstates the special benefit of  
10 LID improvements in a number of ways.  
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13 65. Spreadsheets show arbitrary changes to revenue and capitalization rates. For  
14 the Harbor Steps, Mr. Macaulay assumed room/rental rates would increase by 2.00% (low)  
15 and 3.00% (high) due to the 2024 LID Improvements. Mr. Macaulay then uses these same  
16 percentages (2.00% and 3.00%) to increase retail and parking. He then uses this  
17 hypothesized increased revenue to calculate a new net operating income for the commercial  
18 properties and capitalizes that to come up with an “After” valuation.  
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22 66. For changes to capitalization rate (“cap rate”), Mr. Macaulay assumes the net  
23 operating income remains the same as in the hypothetical “Before” condition but changes  
24 the cap rate. For the Harbor Steps, the cap rate goes from 4.10% to 3.98% (low scenario,  
25 creating a bigger value increase) and 4.02% (high scenario, creating a lower value increase).  
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29 67. Mr. Macaulay then averages his four “After” values to arrive at a final special  
30 benefit conclusion. For the Harbor Steps, this is an increase in property value of 2.50% due  
31 to the LID Improvements.  
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35 68. Mr. Macaulay offered little justification for his micro adjustments to revenue  
36 and capitalization rates. When asked precisely what the basis is for his special benefit  
37 percentage increases to revenue for each commercial property, he could not point to  
38 anything specific other than his judgment. 6/23/2020 Hrg. Tr. at 113:24-115:24. There also  
39 is nothing in the report to allow a reader to understand how he came up with these  
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1 percentages. *Id.* at 112:24-113:3. And there is no model or equation that he relied on—  
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3 again, just his “judgment.” *Id.* at 113:4-6. Although he claims that the spreadsheets explain  
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5 the basis for his belief that certain factors—liked increased connectivity—will increase  
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7 property values (*id.* at 50:7-25), he could not explain how he went from general principles to  
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9 very specific percentage adjustments to revenue and capitalize rate. *Id.* at 115:10-24. And  
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11 for the first two “Scenarios” in the spreadsheet, he applied percentage changes to all revenue  
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13 sources equally even though there was no separate analysis done for food and beverage or  
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15 parking. *Id.* at 116:14-25, 117:11-21. Thus, he has not rebutted Taxpayer’s expert’s  
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17 conclusion that the adjustments are arbitrary and fall below generally accepted margins of  
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19 error, and that there is no actual, measurable, non-speculative special benefit to Taxpayer’s  
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21 properties.

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23 69. Mr. Macaulay testified that he used comparable sales as a reasonableness  
24  
25 check for commercial properties. But as explained above, no City witness has explained  
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27 how anyone, or all, of the sales are comparable to any particular commercial property within  
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29 the LID. *Compare Bellevue Plaza*, 121 Wn.2d at 406. Further, Mr. Macaulay testifies that  
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31 in order to make sales “comparable,” he would have had to make adjustments to account for  
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33 Before and After conditions, but there is no way to understand how adjustments were made  
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35 because he “didn’t do a separate sales comparison approach where we showed adjustments  
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37 and whatnot.” 6/23/2020 Hrg. Tr. at 128:25-129:24. When asked how he determined that  
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39 his adjustments were reliable, he said it would have simply been a “test of reasonableness.”  
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41 *Id.* at 127:10-128:24.

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43 70. It also bears noting that any “internal review” of the special benefit estimates  
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45 would have been largely arbitrary given Mr. Macaulay’s testimony that there is no margin of  
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47 error. Indeed, given all the same information, he seemed to suggest that it would be

1 perfectly reasonable for another experienced appraiser to come up with special benefit  
2 estimates that were five times higher than his estimates. 6/23/2020 Hrg. Tr. at 93:2-12; *see*  
3 *also id.* at 89:20-90:2 (testifying that it might be reasonable for two appraisers with the exact  
4 same quality of data to be 50% off). Ultimately, his repeated insistence that there is no  
5 margin of error conflicts with the testimony of Taxpayer's experts and reaffirms that there  
6 are absolutely no standards governing his process. *See id.* at 91:6-94:5. Even if the typical  
7 margin of error (5%) is a "rule of thumb" and not a "hard legal standard," there are still  
8 reasonable and unreasonable variations within the appraisal field. *See Examiner's*  
9 Recommendation at IV.B.4. Thus, the special assessment is not actual, measurable or  
10 special because it is arbitrarily assigned; and it is too small to realistically be supported by  
11 appraisal techniques.  
12

13 71. No evidence of special benefit. Meanwhile, there is "no actual evidence from  
14 any seller or purchaser that the price was higher because of the LID improvements."  
15 *Bellevue Plaza, Inc.*, 121 Wn.2d at 409. As in *Bellevue Plaza*, the City's appraiser "has not  
16 identified any seller or buyer, or any particular property where the existence of the LID  
17 improvements had an effect on the market price." *Id.* at 410-11. Meanwhile, Taxpayer has  
18 explained that the property has not increased rental rates or revenue due to the forthcoming  
19 LID Improvements, because, among other reasons (and apart from COVID), the  
20 improvements ABS believes will generate value do not exist and will not for a number of  
21 years to come. There are no comparable sales because the LID Improvements are not in  
22 place, nor will they be until the end of 2024 if completed on schedule.  
23

24 72. The fair market value of Harbor Steps' property has not changed due to  
25 increased waterfront view. *Cf. Appeals of Jones*, 52 Wn.2d 143 (property was not specially  
26 benefited from installation of new water main and fire hydrant where it was already  
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1 adequately supplied with water and afforded adequate fire protection). And in any event,  
2 any value attributable to removal of the viaduct was to be excluded from the assessment  
3 calculation.  
4

5  
6 73. There is no special benefit to the Harbor Steps because its apartment demand  
7 is driven by proximity to downtown job centers. In fact, the LID improvements diminish the  
8 value of Harbor Steps' property by drawing visitors away towards improvements that do not  
9 abut the property and increasing competition in other areas of the city. *See Kuskys*, 85 Wn.  
10 App. 493 (testimony of owners' expert that LID actually diminished value of property was  
11 sufficient to rebut presumption that assessment was proper). The ground floor retail tenants  
12 will be harmed by the LID improvements because the Overlook Walk and Union Street  
13 connection improvements will likely direct foot traffic away from the Harbor Steps and  
14 towards Pike Place Market. Less demand for Harbor Steps' retail businesses will result in  
15 lower rents and less revenue. Mr. Macaulay did not account for any of these impacts. Harbor  
16 Steps already has a high-quality connectivity to the waterfront and no data was presented to  
17 justify a value lift based on additional connection points several blocks away. On cross-  
18 examination, Mr. Macaulay could not point to any specific data in the ABS Special Benefit  
19 Study justifying the precise special benefit to Harbor Steps, claiming only that the market  
20 would generally support additional connection points to the waterfront amenities. *See*  
21 6/23/2020 Hrg. Tr. at 48-50.  
22

23 74. Moreover, the assessment formula is an attempt to distribute costs that do not  
24 relate to special benefits. *See Bellevue Plaza, Inc.*, 121 Wn.2d at 416 (model cannot be  
25 "merely a mathematical model that distributes costs").  
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27 75. The Special Benefit Study fails to address whether the \$346,000,000  
28 estimated LID project cost takes into account the investment that would have occurred in the  
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1 LID area anyway. Furthermore, there is no spatial presentation concerning where dollars are  
2 invested. This is a critical component of estimating which properties receive a direct benefit  
3 from the improvements, versus more incidental benefits further from the park.  
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6 76. Mr. Macaulay also included personal property in his valuation of hotels even  
7 though none of the assessment notices were for personal property (*see* Hrg. Exhibit 130) and  
8 he did not include personal property values for any other types of property. 6/23/2020 Hrg.  
9 Tr. at 62:5-11. This is contrary to an explicit disclosure in the Final Study stating that the  
10 “[a]ppraisal applies to the land and building improvements only” (C-17 at 197). *See also*  
11 Gibbons Decl. ISO Closing Stmt., ¶ 10 (dated 7/7/2020). This also resulted in hotels  
12 receiving a disproportionately high LID assessment in comparison to other property types,  
13 since hotels were the only property type subject to personal property LID assessments.  
14  
15 Fourth Decl. of Gordon ISO Closing Stmt., ¶ 11 (dated 7/7/2020); Gibbons Decl. ISO  
16 Closing Stmt., ¶ 10. Further, inclusion of personal property in hotel valuations violated  
17 notice procedures because hotel property owners only received notice that their real estate  
18 was being assessed. *See* Fourth Decl. of Gordon ISO Closing Stmt., ¶ 12 (dated 7/7/2020).  
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21 77. With seemingly no basis, Mr. Macaulay calculated special benefit to personal  
22 property at the same rate as real property. 6/23/2020 Hrg. Tr. at 134:5-24. So, for example,  
23 a television at the waterfront Marriott is assigned a greater special benefit than the same  
24 television at the Hyatt Regency. *Id.* at 134:25-135. But it is simply wrong to assume that  
25 furniture and equipment is instantly worth more at a hotel closer to the waterfront, and  
26 unreasonable to assign a value lift to personal property that is replaceable at the same cost  
27 and may be obsolete before the LID improvements are even completed. Further, personal  
28 property is highly depreciable, and likely to be fully depreciated or potentially discarded by  
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1 2024. *Id.*; *see also* Gibbons Decl. ISO Closing Stmt., ¶ 10. Thus, the hotel valuations must  
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3 be redone to correct for this error.

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5 78. The proposed final assessment substantially exceeds the special benefit to the  
6  
7 property and is grossly disproportionate to similarly situated properties within the LID. For  
8  
9 these reasons, Taxpayer appeals the following portions of the Examiner's Recommendation:  
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11 Sections II.22, II.23, II.27, IV.B.4, and IV.B.11(a)(iii).

### 12 **State Environmental Policy Act and Other Environmental Permitting**

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15 79. While this appeal is not challenging the City's environmental review and  
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17 permitting processes, those processes are relevant in determining the legality of the  
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19 assessments, and to assessing the delivery risk, the present value of the City's plans, and  
20  
21 ultimately the amount of the assessment. If the roll is finalized, the City will commit to  
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23 pursue projects that have not yet undergone environmental review (thus limiting the choice  
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25 of reasonable alternatives to those projects). For example, if the roll is finalized, the City is  
26  
27 committed to build all of LID Improvements, even though NEPA review of Pier 58 (and 63)  
28  
29 is just beginning. Further, the City has segmented environmental review, and still has a  
30  
31 gauntlet of federal, state and tribal review processes to complete before it will be clear what  
32  
33 the City can legally build, and when. *See Summary and Fiscal Note*, Sea. City Council Bill  
34  
35 No. 119447 at 3 (Jan. 28, 2019); *see also* SMC 25.05.070(A), SMC 25.05.440(D)(2)(b),  
36  
37 SMC 25.05.406 and their counterparts in the SEPA Rules, Chapter 197-11 WAC. Either the  
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39 City is violating SEPA and chapter 25.05 SMC by finalizing the assessment roll and  
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41 committing to reconstruction of Pier 58 and major street improvements without  
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43 environmental review, or the City's Final Special Study has improperly included and is  
44  
45 proposing to assess the Taxpayer the costs and special benefits of improvements that may  
46  
47 not get built. Either way, it is faulty process.

### Due Process Rights

80. The City's failed to notify Harbor Steps sufficiently in advance of the hearing to allow Harbor Steps to obtain evidence and prepare to properly challenge the assessments. Because LID assessments involve a deprivation of property, affected owners have the right to a hearing as to whether the improvement resulted (or will result) in special benefits to their properties and whether their assessments are proportionate, which necessarily includes the right to adequate notice of the hearing. *Carlisle v. Columbia Irrigation Dist.*, 168 Wn.2d 555, 569–70, 229 P.3d 761 (2010).

81. The LID statute specifies that cities must mail notices giving the time and place of the hearing to the affected owners “[a]t least fifteen days before” the hearing and publish the notice once a week for 2 consecutive weeks in the city’s official newspaper, with the final publication at least 15 days prior to the hearing. RCW 35.44.090. However, strict compliance with the statute does not necessarily satisfy due process. *Hasit*, 179 Wn. App. at 956. The key inquiry is whether the owner had sufficient time to gather evidence (and secure their own appraisal), evaluate proportionality of the proposed assessments, and whether the owner asked for more time. *Id.* (noting that 15 days was entirely “insufficient for anybody to get an appraisal”).

82. The City’s Notice of Assessment was sent on December 30, 2019. And the Final Special Benefit Study has only been available for public review since January 7, 2020. Due to this short time frame, Harbor Steps requested a prehearing conference and scheduling order that would preserve and protect Harbor Steps’ right to analyze and respond to the Final Study, obtain expert appraisal testimony, conduct depositions, and to accommodate preliminary motions (*e.g.*, with respect to the interplay between SEPA and the City’s assessment of taxes for Pier 58 and Pike/Pine improvements). The Hearing Examiner

erroneously denied that request. For this reason, Taxpayer appeals the following portions of the Examiner's Recommendation: I.B.

## **VII. Relief Requested**

Harbor Steps respectfully requests that the City Council:

1. Reject the Hearing Examiner's recommended denial of Taxpayer's objection and:
  - a. Cancel the Waterfront Local Improvement District No. 6751 proposed final assessment dated December 20, 2019; or
  - b. Revise Taxpayer's Waterfront Local Improvement District No. 6751 proposed final assessment to \$0 (zero), or such amount as Taxpayer establishes at the hearing in this matter; or
  - c. Remand the matter to the Hearing Examiner or City appraiser to recalculate and reduce Taxpayer's assessment using recognized appraisal techniques consistent with USPAP and:
    - i. Excluding any property value increase attributable to viaduct removal and other planned WSDOT Improvements;
    - ii. Taking into account the effects of COVID-19 pandemic on the value of Taxpayers property and other relevant developments since October 2019;
    - iii. Accounting for and excluding (1) any special benefits from existing or planning improvements that already provide similar benefits to Taxpayers property, and (2) any special detriments from construction and other anticipated LID-related disamenities;

- 1                   iv.     Accounting for and including only those actual benefits  
2                             anticipated to accrue to Taxpayer's property based on its  
3                             location relative to Pier 58, Overlook Walk, and the  
4                             Promenade, and specific elements of the LID Improvements;  
5  
6                   v.     Discounting anticipated special benefits to present value,  
7                             based on reliable estimates regarding when special benefits  
8                             will start accruing following completion of the LID  
9                             Improvements; and  
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11                  vi.    Accounting for such other issues specific to Taxpayer's  
12                             property relevant to calculation of such assessment; and  
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21       2.     Grant such further relief as the City Council deems just and proper.  
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