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BEFORE THE TACOMA CITY COUNCIL

In Re Broadway LID No. 8645:

WILLIAM AND ANN RILEY APPEAL OF
HEARING EXAMINER BROADWAY LID
RECOMMENDATION - HEX 2017-004

NO. HEX 2017-004 / LID No. 8645

BRIEF OF APPELLANTS WILLIAM AND ANN
RILEY

HEARING DATE: August 22, 2017

William and Ann Riley (collectively "Riley"), who own or are members of entities that own parcels within Broadway LID No. 8645, submit this brief as additional support for their appeal of the Tacoma Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation (Final Assessment Roll) dated May 26, 2017 ("Recommendation"). As further support for their appeal, Riley incorporates by reference their submittals to the Hearing Examiner, which were entered into the record as Examiner Exhibits 22 and 59 (and attachments thereto), the sworn testimony of William Riley and the testimony of Valbridge Appraiser Darin Shed elicited on cross examination.

REQUEST FOR RELIEF

Riley requests that the Council deny confirmation of the proposed assessment roll as it pertains to the office/retail and vacant land LID properties and direct the Public

cc: CAO
HEX

1 Works Department to prepare a new assessment roll based upon a wholly new special
2 benefits valuation, supported by data and analysis. Riley further requests that the LID
3 property owners be provided, consistent with their due process rights, adequate notice
4 and a meaningful opportunity to object to the new assessments roll. Finally, Riley
5 requests that the LID property owners not be assessed additional interest accrued during
6 the period of time required to prepare an assessment roll and special benefit valuation
7 analysis that complies with applicable law.
8

9 FORMATION OF BROADWAY LID AND CITY'S PROPOSED ASSESSMENTS

10 On April 18, 2006, the Tacoma City Council adopted Substitute Ordinance No.
11 27475, approving the formation of LID No. 8645, also known as the Broadway LID. This
12 Ordinance provided for the construction of permanent pavement, reconstruction, repair
13 and renewal of sidewalks, installation of ornamental street lighting and landscaping, and
14 construction of surface water, wastewater and water main utility replacement.

15 The Broadway LID was controversial from the very beginning. The LID was formed
16 over the objection of the majority of the affected property owners, contrary to the City's
17 prior long-standing policy,¹ and contrary to the recommendation of the City's Hearing
18 Examiner. The controversy continued when the construction took over 3 years to
19 complete, commencing in 2008 and ending in 2011, severely impacting the businesses
20 within the LID. The evidence presented to the Examiner established that Riley suffered
21 high vacancy rates in his improved properties during the prolonged construction period,
22 and was forced to significantly reduce rents to retain the tenants he had. It has only been
23
24

25 ¹ State law permits formation of an LID if fewer than 60% of affected property owners object. But, prior to
26 2006, it had been the City of Tacoma's long-standing policy to establish an LID only when a majority of the
affected property owners support such action. After considering the protesting petition submitted by
property owners, the Tacoma Hearing Examiner recommended that the LID not be formed. The Council's
approval thus came as a surprise to many property owners.

1 in recent years that occupancy and rental rates for his properties have returned to their
2 pre-construction levels. (See Examiner Exhibit 22.)

3 The controversy culminated when the City finally filed a proposed assessment roll
4 and notified the property owners of the proposed assessments. Notably, by letter dated
5 November 30, 2004, the City provided LID property owners with a Fact Sheet to inform
6 them of the LID process. Through this Fact Sheet, the City advised the property owners:
7 "Your first LID payment would be due approximately 18 months following completion of
8 construction."² It was thus remarkable that the City did not mail the Notice of Assessment
9 Hearing to the LID property owners until March 2, 2017 - almost seven years after the
10 LID improvements were completed. It was even more remarkable that, despite the
11 excessive delay, when the City finally issued notices, it effectively only gave the LID
12 property owners three weeks to analyze the City's proposed assessment roll and prepare
13 objections.³

14
15 Beyond the belated delivery, the LID property owners were stunned by the final
16 proposed assessments. They did not compare favorably to the previously provided
17 estimated assessments. The Public Works Department proposed to assess property
18 owners \$7,644,443, almost double the \$3,915,000 originally estimated. (Examiner
19 Finding 8.) In addition to saddling property owners with substantially higher construction
20 and overhead costs,⁴ the assessments as proposed included \$1,282,414 in interest.

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24 ² See Exhibit 1 attached to Exhibit 22 of the Hearing Examiner record.

25 ³ Because the notices were not mailed until March 2 (Thursday), LID property owners, including William
26 Riley, did not receive the notices until Monday March 6. The hearing (and deadline to file objections) was
March 29, 2017. The Examiner allowed LID property owners an additional 30 days to submit additional
information in support of timely filed objections.

⁴ The final project cost was \$21,345, 815. Construction costs were estimated to be \$12,005,250 when the
LID was formed. (Examiner Finding 8.)

1 (Examiner Finding 16.) Thus, Public Works proposed to pass the cost of the City's five-
2 year delay on to the property owners.

3
4 The sole support for the City's proposed assessments is the Valbridge Special
5 Benefit Study ("Valbridge Study"). (Examiner Exhibit 6.) The Valbridge Study placed LID
6 properties into three categories: Residential, Office/Retail and Vacant Land. The
7 Valbridge Study applies a 4% increase in value to all Office/Retail properties, asserting
8 that this increase is wholly attributable to the LID improvements. With respect to Vacant
9 Land, the Valbridge Study asserts that the LID improvements resulted in a \$10 per
10 square foot increase in value, which equates to a purported 40% increase in value
11 exclusively from the LID improvements. As noted in the chart below, the City is proposing
12 to levy LID assessments on seven of Riley's parcels (LID Parcels 128, 31, 136, 137, 138,
13 146, 147) based upon the Valbridge Retail/Office valuation analysis and two parcels
14 (107 and 102) based upon the Valbridge Vacant Land valuation analysis. More
15 specifically, the assessments proposed to be levied against Riley's properties are as
16 follows.⁵
17

LID No.	Tax Parcel	Street No. Broadway	Property Type	LID Assessment	Add'l Work	Total Assessment
107	200406-006-0	440	Vacant Land	91,123		91,123
108	200406-007-0	454	Vacant Land	122,084		122,084
128	200705-014-0	747-753	Office/Retail	46,130	14,381	60,511
131	200706-001-6	702-704	Office/Retail	57,949	18,132	76,081
136	200706-003-0	712-714	Office/Retail	32,417	13,675	46,092

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⁵ LID Parcel No. 128, located at 747-753 Broadway is owned by William and Ann Riley, Doris Carlisle and the Estate of Dale Carlisle. LID Parcel No. 147, located at 740-744 Broadway, is owned by Bimbo Associates, LLC. William Riley is one of the owning members of the LLC.

LID No.	Tax Parcel	Street No. Broadway	Property Type	LID Assessment	Add'l Work	Total Assessment
137	200706-004-0	718-720	Office/Retail	32,417		32,417
138	200706-006-0	722	Office/Retail	48,625	31,903	80,529
146	200706-009-0	736-738	Office/Retail	77,704	5,310	83,014
147	200706-010-0	740-744	Office/Retail	52,158	6,076	58,234

RILEY'S OBJECTIONS SUBMITTED TO HEARING EXAMINER

Riley timely submitted a written objection of the LID assessments on March 29, 2017 (Examiner Exhibit 22 and attachments), participated in the public hearing, and timely submitted supplemental written materials supporting his objection (Examiner Exhibit 59 an attachments) as authorized by the Examiner.

At the March 29, 2017 hearing, Riley presented (through Exhibit 22, sworn testimony from Riley and cross examination of the City's appraiser) a significant critique of the Valbridge Special Benefit Study. The criticisms include, without limitation that:

- Valbridge failed to prepare a before and after valuation analysis for office/retail properties. Valbridge determined "asking rents" for these properties (ranging from \$6 to \$12 per square foot) to establish a "before value" using the income approach to valuation. (See Valbridge Report at p. 6.) But Valbridge did not determine an "after value." Instead, Valbridge arbitrarily selected 4% as the increase in value attributed to the LID improvements and uniformly applied this rate to the "before values" for all office retail properties. (*Id.*, at pp. 7-10.) The Valbridge study provides no data or analysis to support the selected 4%.
- Valbridge based its special benefit analysis for office retail properties exclusively on the following: (1) Valbridge compared the change in vacancy rates and "walkability scores" for each subject property to four other nearby areas that Valbridge claims are comparable, but the four areas did not have a streetscape LID improvements and (2) Valbridge considered a study that evaluated the impact of streetscape improvements on sales activity (not sales prices) in New York, but Valbridge acknowledged the study is "not definitive." Valbridge failed to present any evidence that these improvements are indicators of value increases, much less that special benefits may be quantified based on this data.

- 1 • With respect to the vacancy rate comparison, Valbridge noted a “dramatic” drop in
2 vacancy rates in 2014 for the subject LID area as compared to the 5-year average,
3 but failed to inform the Examiner that the vacancy rates for the LID areas were
4 artificially high due to the extended construction period that started in 2008, and
5 did not end until 2011. Thus, the comparison was unreliable as a measure of
6 valuation for the special benefits from the LID improvements.
- 7 • Valbridge failed to present any data that walkability scores are a reliable or even
8 viable measure for property value.
- 9 • The Valbridge Special Benefit Study, as it relates to office/retail properties, was
10 based on the income approach, which calculates property value by applying a
11 capitalization rate to market rents. But the study failed to address the data
12 provided in the report addenda that rents in the subject LID area not only declined
13 after the LID improvements, but compared unfavorably to the four comparison
14 areas. This data indicates that property values in the subject LID area actually
15 decreased after the LID improvements were completed.

16 Riley also presented a parcel specific challenge regarding the assessment
17 proposed to be levied against LID Parcel 131 (702-704 Broadway). Riley, at his own
18 expense, replaced both the sidewalk fronting Broadway and the sidewalk extending along
19 7th Street between Broadway and Opera Alley only two years before the LID construction.
20 Thus there was no need to replace the sidewalk. In fact, Riley informed the City of this
21 fact and requested that the sidewalk not be replaced because it extends on a steep slope
22 along 7th Street, and the adjacent building could suffer flooding damage if the area is torn
23 up for an extended period of time. The City ignored Riley’s request and, not only tore up
24 the existing sidewalk, but left the area unimproved for a significant period of time. As
25 predicted, the building flooded. Riley not only lost his tenant, but, along with the City and
26 the City’s contractor, was sued. In addition to losing a tenant and associated rent, Riley
was forced to pay his tenant a settlement and incur substantial costs to restore the
interior of the premises. (See Examiner Exhibit 22 at p. 9 and related attachments.) The
City did not increase the value of this property (which was already benefited by a new

1 sidewalk). To the contrary, the City's negligent construction caused flooding in the
2 building, subjecting Riley to a lawsuit, a lost tenant and substantial repair expenses.

3 After the March 29, hearing, Riley retained Appraiser Barbara Montro, who is not
4 only a certified MAI appraiser, but is also certified for appraisal review. Ms. Montro
5 prepared a detailed Appraisal Review, which is attached as Exhibit A to Examiner Exhibit
6 59. Her professional opinion confirmed that the Valbridge Report is unreliable and cannot
7 support the proposed assessments as being representative or equivalent to the value of
8 special benefits conferred to the LID parcels.

9
10 The Montro Report identified several specific errors in the Valbridge Report,
11 including that the Report does not meet the Uniform Standards of Professional Appraisal
12 Practice ("USPAP") so as to qualify as an Appraisal Report, Restricted Appraisal Report or
13 Mass Appraisal. The summary of Ms. Montro's conclusions is set forth on pages 17 and
14 18 of her Appraisal Review Report. Ms. Montro concluded that "the work product
15 reviewed is incomplete and is not a USAP compliant appraisal report format," and that
16 there "is an abundance of errors that are deemed to be material errors affecting the
17 credibility of the results and the value conclusions are not reasonable." (Montro Report at
18 p. 17.)

19
20 With regard to the claimed 4% increase for office/retail properties, Montro
21 concluded that the Valbridge Report presents "no supportable evidence that overall
22 property values increased from 2008 to 2011." (*Id.* at p. 18.) With regard to the
23 comparable vacant commercial land sales presented in the Valbridge Report, Montro
24 concludes the Report "misleads the client and intended users that there was a 40%
25 increase in land values from 2008 to 2011" (presenting a purported before value of
26

1 \$25/sf and a purported after value of \$35/sf). But the market data will not support a
2 value increase of more than 10%. (*Id.*)

3 Ms. Montro did express an opinion that there was some benefit from the
4 Broadway LID project. But she concluded:

5 [T]he [Valbridge] Report does not provide adequate data,
6 analysis or reliable conclusions to quantify the value of the
7 LID improvements. There is no data to support the 40%
8 increase in land values stated in the Report. Likewise, no
9 credible data was presented to support the 4% increase for
10 office-retail properties in the LID area. Based on my review,
11 the data presented is misleading, the Report has an
12 abundance of errors, the value conclusions are not credible,
13 and the conclusions appear to be substantially overstated.

14 (Montro Report at p. 18.)

15 RILEY'S ASSESSMENT ADJUSTMENTS PROPOSED TO EXAMINER

16 Riley questions that value was added to his office-retail properties. Nonetheless,
17 he proposed that his office retail properties be assessed based upon a 1% increase in
18 value attributable to the LID improvements. (Certainly no data has been presented to
19 support a special benefit value greater than 1%.)⁶

20 For LID Parcels 107 and 108, which are largely unimproved, Riley proposed
21 assessments based upon a 9.75% increase in value. LID Parcels 107 and 108 are vacant
22 lots that are paved and striped and currently used for parking. Thus, the analysis applied
23 to properties fully improved for office-retail use does not apply. The Montro Report's
24 critique of the Valbridge vacant land comparable land sales (see pages 8-10), supports
25 the conclusion that the \$10 per square foot special benefit value applied by Valbridge is

26 ⁶ Riley provided a chart at page 6 of Examiner Exhibit 59 setting forth a specific proposed assessment
calculated for each office-retail parcel by applying 1% to the "before value" for each parcel set forth in the
Valbridge Report summary spreadsheet. (Relevant pages of the Valbridge summary spreadsheet, with the
Riley properties highlighted, are attached as Exhibit B to Examiner Exhibit 59.)

1 grossly overstated. As noted on page 9, ¶ d of the Montro Report, the 2009 and 2012
2 sales of the LID property located at 545 Broadway (Valbridge Comparable Sales 2 and 8)
3 present viable comparables, respectively, for before and after values of vacant land LID
4 parcels. As reported by Valbridge, the increase in land value for this property over the
5 three-year period was \$3.41 per square foot. For the proposed assessment, Riley
6 generously assumes that the entire increase in value is attributed to the LID
7 improvements, even though the improved market conditions in 2012 (as compared to
8 2009) likely explain the majority of the increased value. Applying a \$3.41 per square foot
9 special benefit value to 9,374 square feet for LID Parcel 107 and 12,559 feet for LID
10 Parcel 108, the proposed assessment for LID Parcels 107 and 108 are \$31,853 and
11 \$42,826, respectively.

12
13 Finally, Riley proposed no assessment for LID Parcel 131, which is the parcel that
14 was already improved with a new sidewalk. The City did not increase the value of this
15 property. To the contrary, the City's negligent construction caused flooding in the building,
16 subjecting Riley to a lawsuit, a lost tenant and substantial repair expenses.

17 THE HEARING EXAMINER'S FINDINGS AND RECOMMENDATION

18
19 Following review of timely submitted written objections and testimony presented
20 at the public hearing, on May 26, 2017, City of Tacoma Hearing Examiner Phyllis Macleod
21 issued Findings of Fact, Conclusions of Law and a Recommendation regarding the
22 proposed Broadway LID assessments.

23 The Examiner's Findings of Fact with respect to Valbridge's general Retail/Office
24 valuation analysis are at Findings 28 through 35. The Examiner ultimately found at
25 Finding 35:
26

1 The 4 percent increase is an adjustment applied generally to
2 commercial properties within the Broadway L.I.D. boundary.
3 The Valbridge Study has some rationale to support an
4 increase in the values based on the significant upgrades that
5 were installed along the streets in this area. The level of
6 detail and justification using recognized appraisal techniques
7 for quantifying the amount of increase is weak. At same the
8 time, the proposed increase of 1 percent suggested by Mr.
9 Riley (and not by his Review Appraiser) is wholly without
10 support in the record.

11 The Examiner thereafter concluded at Conclusion of Law 6(c):

12 Office/Retail/Commercial property is not recommended for
13 confirmation. Further appraisal analysis is needed to support
14 the 4 percent benefit suggested for this type of property. The
15 evidence at hearing showed that commercial property within
16 the L.I.D. was benefitted by the significant improvements
17 that were constructed by the project; however, the evidence
18 was insufficient to support the specific 4 percent adjustment
19 applied in the Valbridge Study. The City Council may wish to
20 consider requesting further appraisal analysis from the
21 Valbridge firm to more fully document the basis for selecting
22 a 4 percent increase for office/retail/commercial properties
23 within the project area.

24 The Examiner's Findings of Fact with respect to Valbridge's general Vacant Land
25 valuation analysis are at Findings 24 through 27. Despite Montro's critique and analysis
26 of the available comparable sales, and despite the lack of any substantiated response
27 from the City's appraiser, the Examiner found that "the weight of the evidence supports
28 the Valbridge Study's conclusions regarding the benefits to undeveloped land in the
29 L.I.D." (Finding 26.) The Examiner thereafter recommended confirmation of the proposed
30 assessments at Conclusion 6(b).

1 *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993);
2 *Doolittle*, 114 Wn.2d at 102-04. An assessment against property which does not receive
3 a special benefit from the improvements, or substantially exceeds the value of a special
4 benefit, constitutes a deprivation of property without due process of law. *Hasit*, 179 Wn.
5 App. at 933

6
7 Because LID assessments involve a deprivation of property,
8 affected owners have a right to a hearing as to whether the
9 improvement resulted in special benefits to their properties and
10 whether their assessments are proportionate.

11 *Hasit*, 179 Wn. App. at 933, citing *Carlisle*, 168 Wn.2d at 569-70.

12 The preparation, adoption and review of LID special assessments are governed by
13 chapter 35.44 RCW. RCW 35.44.010 directs that the costs and expenses of local
14 improvements be assessed against all properties within the LID “in accordance with the
15 special benefits conferred” on the individual properties. State law requires that an
16 assessment roll, setting the amounts to be assessed against each parcel, be prepared
17 and then submitted to the local legislative body for consideration in a public hearing in
18 which property owners may present objections. RCW 35.44.050, .070. The local
19 legislature may conduct the hearing itself, or designate a committee or hearing officer.
20 RCW 35.44.070.

21 Following proper notice, the hearing officer is required to “consider all objections”
22 at the hearing. RCW 35.44.070. The hearing officer is to “sit as a board of equalization.”
23 RCW 35.44.080(2). The role of a Board of Equalization is to “examine and compare the
24 returns of the assessment of the property of the county and proceed to equalize the
25 same, so that each tract or lot of real property and each article or class of property shall
26 be entered on the assessment list at its true and fair value.” RCW 84.48.010. At the

1 hearing, the hearing officer, sitting in its capacity as Board of Equalization, should thus
2 “consider the objections made” and correct and revise the roll as necessary to ensure
3 that it complies with the requirement set forth at RCW 35.44.070, which, again, is to
4 proportionately assess costs to each property in accordance with the special benefits
5 actually conferred to that property. RCW 35.44.080(3).
6

7 Significantly, the Legislature did not limit or confine a city’s own review of a
8 recommended assessment that has yet to be legislatively confirmed, nor did it direct
9 cities to give deference to an appraiser’s recommendation. To the contrary, the statute
10 expressly provides that the assessment submitted to the council “shall be in the nature of
11 a preliminary determination” and “shall not be binding and conclusive in any way on the
12 board, officer or authority in the preparation of the assessment roll for the improvement
13 or upon the council in any hearing affecting the assessment roll.” RCW 35.44.060.
14

15 A reviewing hearing officer may initially presume that the properties within the LID
16 are specially benefited and that the recommended assessments are fair. *Indian Trail*
17 *Trunk Sewer v. City of Spokane*, 35 Wn. App. 840, 841-42, 670 P.2d 675 (1984). A
18 hearing officer may not, however, simply rest on that initial presumption. The
19 presumption does no more than place the initial burden going forward with evidence
20 upon the party challenging the assessment. *Id.* at 842. It means only that an assessment
21 will be presumed valid in the absence of a timely filed objection supported by evidence.

22 A presumption is not evidence and its efficacy is lost when the
23 other party adduces credible evidence to the contrary. Presumptions are the “bats of the law, flitting in the twilight but
24 disappearing in the sunshine of actual facts. The sole purpose of a
25 presumption is to establish which party has the burden of going
26 forward with the evidence on an issue. The ultimate burden of
showing that the LID is specially benefited remains with the City.
(Citations omitted.)

1 *Id.* at 843. See also, *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404,
2 851 P.2d 662 (1993). Thus, upon the presentation of credible evidence contrary to these
3 presumptions, the burden of proof shifts to the City. *Hasit*, 179 Wn. App. at 935-36. In
4 *Hasit*, Division II noted that “with the burden-shifting commanded by *Bellevue Plaza*, 121
5 Wn. 2d at 404, 851 P.2d 662 and *Indian Trail*, 35 Wn. App. at 843, 670 P.2d 675, the
6 extent to which ... [these] presumptions are used by municipal decision makers may be a
7 question of little consequence.” *Id.* at 950.

8
9 In addition to the rules of law set forth above, the Council also applies TMC
10 1.70.010C on this appeal of the Hearing Examiner’s recommendation. Relevant to this
11 appeal, the City may grant relief if: (a) the Hearing Examiner is engaged in unlawful
12 procedure or failed to follow a prescribed process, unless the error was harmless; (b) the
13 recommendation is an erroneous interpretation of the law; (c) the recommendation is not
14 supported by evidence that is substantial when viewed in light of the whole record before
15 the Council; and (d) the recommendation is a clearly erroneous application of the law to
16 the facts.

17
18 **B. The Examiner Correctly Found That The Valbridge Report Is Not Sufficient To**
19 **Support A 4% Increase In Value For Retail Property, But Erroneously**
20 **Recommended, Contrary To Property Owners’ Due Process Rights, Curing The**
21 **Deficiency With After-The-Fact Analysis To Support The City’s Desired Conclusion.**

22 The Examiner correctly found that the evidence presented at the hearing and in
23 the record “was insufficient to support the specific 4 percent adjustment applied in the
24 Valbridge Study.”⁷ The Examiner also correctly recommended that the assessments

25
26

⁷ The Examiner’s finding that “the Valbridge Study has some rationale to support an increase in values based on the significant upgrades that were installed along the streets in this area.” (Finding 35.) The Examiner fails to identify specifically what that rationale or data is. Instead, this finding simply presupposes that an increase in value will always accompany any substantial improvement. But the law requires that proof of a special benefit requires evidence. *Hasit, supra*. With regard to the retail/office properties, there is a complete failure of proof of a special benefit.

1 recommended for these properties should not be confirmed. But, the process
2 recommended to cure the City's failure to substantiate the special benefit valuation and
3 meet its burden of proof is contrary to the law and will deny LID owners due process.
4

5 The LID property owners, and Riley in particular, proffered credible evidence
6 sufficient to satisfy their evidentiary burden to rebut the initial presumption favoring the
7 proposed assessment. The burden of proof to support the proposed assessment as not
8 exceeding the special benefit value shifted to the City. *Hasit, supra*, 179 Wn. App at 935-
9 36. The Examiner's Findings demonstrate the City failed to meet that burden of proof.
10 The record is now closed and LID property owners are precluded from submitting
11 additional evidence.

12 Allowing the City to supplement the record with additional study as recommended
13 at Conclusion 6(c) to cure the City's failure of proof is contrary to the statutory process set
14 forth in chapter 35.44 RCW, and specifically 35.44.100, and Riley's due process rights.
15 *Hasit*, 179 Wn. App. at 933, 957-58. The Examiner's recommendation is thus an
16 erroneous interpretation of the law and proposes an unlawful procedure.
17

18 The appropriate action for the Council is to set aside the assessment roll
19 pertaining to Retail/Office properties, at the very least, and direct the Public Works
20 Department to generate a new assessment roll supported by a wholly new, substantiated
21 valuation analysis. The new assessment roll and valuation analysis should be subject to a
22 de novo objection process, with adequate notice,, that affords LID property owners a
23 meaningful opportunity to object with the presentation of additional evidence. The
24 Council should also instruct the Public Works Department

- 25
- 26 • Special assessments cannot simply spread the costs of improvements and may not substantially exceed the value of special benefits derived solely from the LID improvements. Assessments that violate this principle constitute a deprivation of

1 property without due process of law. *Carlisle v. Columbia Irrigation Dist.*, 168
2 Wn.2d 555 at 569-70; *Hasit*, *supra*.

- 3
- 4 • The new assessment roll should be supported by data and all relevant data and
5 analysis relied to prepare the new assessment roll must be timely made available
6 to the property owners for review.

7 Notably, both at the hearing and in his response letter (Examiner Exhibit 60),
8 Valbridge Appraiser Darin Shedd responded to criticism regarding his report by referring
9 to undisclosed data in his files. He summarily stated that his valuation opinions were
10 “based on my research and analysis performed over many months.” (Exhibit 60,
11 Valbridge Letter at p. 1. He stated that Montro’s critique was of his report and not his
12 appraisal and did not consider “the lengthy file documentation and research performed
13 by the appraisers over many months.” (*Id* at p. 2.) But none this purported research, data,
14 or files was provided to the property owners for review. Shedd criticizes property owners
15 for failing to consider his research and files, but fails to give them access to this
16 information.

17 Notably, in *Hasit*, the Court of Appeals held that failure to timely make available
18 information relied upon to prepare and support valuations used to generate the
19 assessment roll is contrary to the property owner’s due process right to meaningful
20 opportunity to object to levied assessments. 179 Wn. App. at 957-58. Data and analysis
21 relied upon to support or prepared the assessment roll should be produced to the
22 property owners with sufficient time to respond.

23 **C. The Examiner Erroneously Concluded That The Vacant Land Assessments Are
24 Supported By The Evidence In The Record.**

25 The Examiner ultimately found at Finding 25 that “the weight of the evidence
26 supports the Valbridge Study’s conclusions regarding the benefits to undeveloped land in
the L.I.D.,” and recommended confirmation of the proposed assessments at Conclusion

1 6(b). But the Examiner's findings and conclusion are not supported by the substantial
2 evidence in the record and result from an improper application of the burden of proof.
3 The substantial evidence in the record does not support a special benefit value that
4 equates to a 40% increase in value.
5

6 Notably, Valbridge Appraiser Darin Shedd was permitted to respond to Montro's
7 critique by letter submitted after the record was closed for submissions from the property
8 owners. (See Valbridge Letter at Examiner Exhibit 60.) Once again, Shedd responds with
9 unsubstantiated conclusory testimony. For example, his response on parking
10 improvement values is "based on [his] experience with both appraising parking lots and
11 working with parking lot development experts." (*Id.* at p. 4.) But he provides no data or
12 substantiating documentation. The valuation is unsupported by credible evidence and the
13 City failed to meet its burden of proof.

14 The Council should set aside the assessment roll pertaining to Vacant Land LID
15 properties. Any proposed new assessments based upon new or supplemental valuation
16 analysis should be subject to a de novo objection process, with adequate notice to the
17 LID property owners and affording them an opportunity to object with the presentation of
18 additional evidence
19

20 **D. The Examiner's Findings Regarding Parcel 131 Are Not Supported By The**
21 **Substantial Evidence In The Record.**

22 Finally, Riley challenges the Examiner's Finding of Fact 52 regarding LID Parcel
23 131 as not supported by the substantial evidence in the record and an improper
24 application of the burden of proof, making the recommendation a clearly erroneous
25 application of the law to the facts. Riley presented credible evidence that, because the
26 existing sidewalks adjoining this parcel were recently replaced and new construction, the

1 LID improvements did not add value to his property. Moreover, the work was performed in
2 such a manner as to damage the property with flooding.

3
4 The Examiner responded that "the evidence did not support that that the work
5 assessed against this parcel was not performed or that that it did not advance the overall
6 benefit and uphold uniformity of the project improvements." (Finding 52.) But in
7 determining the lawfulness of an assessment, the question to be decided is not whether
8 LID work was performed, but whether the work performed added value to the property.
9 Once Riley presented credible evidence that no value was added, and, at a minimum any
10 value added was substantially less than the assessment, the burden of proof shifted to
11 the City to support the assessment. The Examiner identifies no evidence to support the
12 assessment levied against Parcel 131 - she only notes that LID improvements were
13 installed. The substantial evidence in the record establishes that the City failed to meet
14 its burden and the Examiner improperly placed the burden of proof on Riley.

15
16 The City Council should adjust any assessment role to eliminate any assessment
17 against Parcel 131, or at a minimum, substantially reduce any assessment levied against
18 this parcel.

19 Dated this 15th day of August, 2017.

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