

**FINDINGS AND CONCLUSIONS AND RECOMMENDATIONS
OF HEARING EXAMINER REGARDING LID 78
CITY OF SUMNER, WASHINGTON**

I. INTRODUCTION

Pursuant to notice, a hearing was held on April 8, 2019, at the Sumner City Hall in Sumner, Washington, for the purpose of considering protests to the final assessments for LID 78. Wayne Tanaka was the Hearing Examiner, pursuant to appointment by the City Council in Resolution 1517. The City was represented by Steven DiJulio. The hearing was transcribed by court reporter, Ann Marie Allison. An audio recording of the hearing was also made. A complete list of exhibits is attached to this report as Exhibit A.

II. FINDINGS OF FACT

A. GENERAL FINDINGS.

1. LID 78 was formed by the Sumner City Council on August 15, 2011 by passage of Ordinance 2367. The LID was created to construct improvements to 136th Avenue East and Valentine Avenue SE (the Project).¹ The Project is a joint undertaking between the Cities of Sumner and Pacific although each city formed its own separate LID. This hearing pertains only to the assessments levied against properties in Sumner.
2. The Project included improvements to the 136th Avenue corridor from 24th Street East to 16th Street East. Improvements include the construction of a three-lane road, bike lanes, sidewalks, street lighting and a traffic signal at 136th Avenue and 24th Street East. The Project construction began in July 2014. The Project was accepted as substantially complete on June 20, 2017.
3. Total construction costs were \$13,345,396 for Pacific and \$8,904,434 for Sumner. Approximately 50% of the approximate \$22,250,000 total project cost is to be paid by the owners of property specially benefited or \$4,299,073 for properties in Sumner.
4. The Hearing Examiner took a short tour around the City and LID area to view the properties just prior to the hearing.

¹ Exhibit 1, pages 1-3. Exhibits may be examined at the City Clerk's office.

5. At the start of the hearing, the Hearing Examiner explained his role and the procedures that would be followed at the public hearing. All who intended to testify were sworn.
6. The City presented certain preliminary testimony from Mr. Mike Dahlem, Public Works Director, Jason Wilson, Finance Director and Mr. Robert Macaulay, the appraiser. The City also submitted Exhibits 1 through 2. The City's testimony and exhibits provided the background for the LID, explained the financing and costs, described the general condition of the area both before and after the project and explained how the costs of the Project were allocated. Mr. Macaulay provided an explanation of his methodology and, in general, how he arrived at the recommended special benefits and assessments. City witnesses stressed that the City of Sumner and the City of Pacific had each formed separate LID's. While certain costs were shared, and Sumner was responsible for project management after 2012 through an interlocal agreement², each LID was a separate entity.
7. There were 6 written protests filed with the Clerk prior to the hearing and one filed at the hearing. The Hearing Examiner has reviewed each written protest, plus his handwritten notes.

B. FINDINGS AS TO SPECIFIC PROPERTIES.³

1. 136th Street LLC, Parcels 160, 169 and 170. A written protest was filed⁴, but no testimony or other evidence was offered. The written protest recounts the owners' purchase history of the property and concludes that the fair market value (FMV) of the property is significantly overstated by the City's appraiser. The owner offers no appraisal evidence.
2. Prestige Worldwide Holdings, LLC, Parcels 184-6. A written protest was filed⁵, but no testimony or other evidence was offered. The written protest argues that the "without LID value" is understated as undefined other property in similar neighborhoods are selling for the same as properties on 136th. The owner recounts that a 10-acre property adjacent to his property sold for \$13.25 a square foot which does not square with Macaulay's opinion of \$16 a square foot in the "with LID" situation. The owner does not offer appraisal evidence.
3. Gary Dhadda, Parcel 165. A written protest was filed⁶, but no testimony or other evidence was offered. The property contains a single-family residence. The

² Exhibit 1, page 3. No property owner disputed this characterization. Therefore, references in the appraisal report suggesting one LID are presumed to be misinterpreted. See for instance the LID boundary map on Exhibit 1, Tab D, page 3, the boundary description on page 5.

³ The findings are not meant to summarize every aspect of the testimony, only that portion that the Hearing Examiner believes is relevant. Thus, for instance, testimony regarding the personal financial situation of the property owner is generally left out. Further, any finding more properly denominated a conclusion should be considered as such.

⁴ Exhibit 3

⁵ Exhibit 4

⁶ Exhibit 5

owner suggests that his assessment be deferred until the property is developed to industrial uses in accordance with the zoning.

4. Dan Stokes, Parcel 152. A written protest was filed⁷ and Mr. Stokes testified. He indicated that the property is about .4 acres in size with a wetland along the rear which reduces the developable area by one half. In his opinion this makes the property too small for industrial uses. Mr. Macaulay indicated that this property had the lowest assessment per square foot, which took into account the challenges with developing this property to highest and best use. He pointed out that the zoning code does not have minimum area for the allowed industrial uses and opined that the property was a candidate for assemblage, although he had no information on whether surrounding properties would be suitable for such assemblage. Mr. Macaulay did not specifically view the wetlands to the rear of the property and indicated that commercial/industrial purchasers typically value property by the amount of developable square footage.
5. Thomkat Investments, LLC, Parcel 180. In addition to the protest letter, Mr. Haass, the property owner and Mr. Capell the VP of Operations provided testimony. The owner was represented by attorney Erica Doctor. The owner states that the preliminary assessment roll in 2011 totaled about \$1.523 million from the property owners and now the City is seeking to recover \$4,299,073.⁸

The owner argues that the final assessment for his property, \$450,742, is unduly burdensome since the same improvements could be completed for \$305 a lineal foot of frontage as compared with the \$784 a lineal foot in the final assessment.

The owner next argues that the assessment is an unconstitutional taking.⁹

Next, the owner argues that the assessment is based on a fundamentally wrong basis because of reliance on “stigma and aesthetic appeal”. The owner argues that the appraiser speculated that properties would have to make half street improvements as a condition of development. The owner states that his assessment is disproportionate because his property is improved and others in the LID are vacant. Next, the owner argues that there is no basis for using front footage to assess benefits.¹⁰

Finally, the owner argues that the appraiser allocated costs without reference to benefits conferred.¹¹

In rebuttal, the City explained that while the City’s costs for the LID increased, the City determined that there were no additional funds, either through grants or other funds available to help offset the increase in estimated costs. This affected

⁷ Exhibit 6

⁸ Exhibit 7, page 2

⁹ Exhibit 7, page 3

¹⁰ Exhibit 7, pages 3-4

¹¹ Exhibit 7, page 5

both the amount the property owners had to bear and, consequently, the percentage. Further, the City stated that the initial estimate of grants was higher than occurred.¹² The Public Works Director indicated that the City estimated that a private developer would have to spend between \$800 and \$1000 a lineal foot to install the improvements. The owner's claim of \$305 a lineal foot was unrealistic in his opinion and experience, especially since the road was concrete, not asphalt and was 11 inches thick due to the anticipated truck traffic on the road. Mr. Macaulay testified that the appearance and functionality of a street has a bearing on market value and is borne out in the market data study portion of the appraisal.¹³

6. Hrach Tavitian. This protest¹⁴ relates to a tax ID parcel and a property address not shown on the final assessment roll for LID 78. The purported owner, Hatch and Sons LLC is also not shown on the final assessment roll. The protest may refer to property in Pacific. No testimony or other evidence was offered.

7. Pacific Southern, LLC, Parcels 166, 167, 168, 181, 182 and 183. In addition to the written protest¹⁵, the property owner, Mr. Scarsella testified. The owner was also represented by attorney Ms. Hancock. Ms. Hancock introduced an exhibit¹⁶ which was the preliminary assessment roll. At that time the preliminary assessments for all 6 parcels above was \$266,000. The final assessments total \$704,000. Further, the preliminary assessment roll estimated that the property owners would bear about 22% of the cost. The final is almost 50%. Thus, the owner argues that he had no opportunity to protest the LID when formed since he had no idea the assessments and assessment ratios would increase so much. Further, the owner believes he was deceived by the City's preliminary assessment when he purchased 3 of the lots in 2017 or 2018 because he had no idea the assessments would be increased.

The owner argues that the City has identified other development fees including water, stormwater and traffic mitigation. The owner questions whether the City is collecting twice for the same improvements.

The owner questions the City's calculation of special benefits because of a significant discrepancy in the appraisers estimate of value and the Pierce County assessors tax assessment.¹⁷

Finally, the owner argues that the City failed to proportionally assess the benefits because the City's appraiser listed three of the parcels as having 297,000 square feet, whereas a survey shows the square footage as 295,000.¹⁸

¹² Exhibit 11, page 1.

¹³ Exhibit 1, tab D, beginning on page 60.

¹⁴ Exhibit 7B

¹⁵ Exhibit 8

¹⁶ Exhibit 9

¹⁷ Exhibit 8, page 4.

¹⁸ Exhibit 8, page 5 and tab 7.

In rebuttal, the City indicated that the LID did not include costs of improvements paid by the water, sewer and stormwater funds. The City acknowledged the increased costs of the project and that there were no additional funds available beyond what was anticipated. The City indicated that there were substantial costs, primarily administrative, that were not charged to the LID property owners, and thus were costs borne by the City.

III. CONCLUSIONS

A. GENERAL CONCLUSIONS.

1. Any conclusion deemed to be a finding shall be so considered.
2. Special benefits are measurable increases in the value of real property in excess of any enhancement to the general area. It is measured as the difference between the market value of the property without the LID Project and the market value with the LID Project assumed completed at the same date.
3. Initially, the City is favored with certain presumptions: that the improvements are a benefit to the property within the LID, the assessment is no greater than the benefit, the assessment is equal or ratable to the assessments upon other properties similarly situated, and the assessment is fair.¹⁹ The property owner has the burden of producing evidence to rebut these presumptions. If the property owner presents sufficient evidence to rebut the presumptions (generally through appraisal testimony or other evidence of property value with and without the Project improvements), the City has the ultimate burden of showing special benefits.²⁰
4. Mr. Macaulay's qualifications and experience are set forth in his study.²¹ No evidence was presented to challenge his qualifications. The Hearing Examiner concludes that Mr. Macaulay and his associates qualify as experts in the areas testified.
5. The special benefit analysis performed by the City more fairly reflects the special benefits to the properties within the LID other than the zone and termini or other method.²²
6. The City Council has delegated certain limited authority to the Hearing Examiner for this hearing. As provided in 3.40.105 SMC, the Hearing Examiner is authorized to conduct the final assessment roll hearing and to make certain recommendations to the City Council. The City Council may correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order

¹⁹ In Re Indian Trail Trunk Sewer, 35 Wash. App. 840 (1983).

²⁰ Bellevue Plaza v. Bellevue, 121 Wn.2d 397 (1993).

²¹ Exhibit 1, beginning at page 69.

²² Testimony of Macaulay.

for the assessments to be made de novo, or that the City Council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change.

7. The Hearing Examiner does not believe he has the authority to rule on the validity of the creation of the LID, any alleged failure to reopen the LID formation process, any alleged failure of the City to comply with non-statutory notice requirements or on constitutional issues.

B. CONCLUSIONS AS TO SPECIFIC PROPERTIES.

1. 136th Street LLC. The owner argues that the arm's length purchase price of \$13.25 a square foot should represent the "after" value since the owner was aware of the LID assessment at the time the purchase and sale agreement was signed. However, the owner states that the purchase and sale agreement required the Seller to pay the assessments "of record" at the time of closing. Since the closing of the property occurred before the final assessment roll was confirmed, he decided to go forward with the purchase even though apparently, he would have to pay the assessments. The amount of the proposed assessments increases the fair market value to something more than the \$13.25 a square foot. The owner is entitled to opine on the FMV of his property but offers no other evidence that the assessments are incorrect. The property owner has failed to overcome the presumptions in favor of the City and therefore the protest should be denied.
2. Prestige Worldwide Holdings, LLC. The property owner questions the validity of the appraisal but offers no evidence of error, other than reference to an adjoining 10-acre assemblage which is the subject of the first protest. The property owner has failed to overcome the presumptions in favor of the City and therefore the protest should be denied.
3. Gary Dhadda. Mr. Dhadda's request to defer charges until the property is redeveloped to industrial use is referred to the City Council for possible action. Otherwise, the property owner has failed to overcome the presumptions in favor of the City and therefore the protest should be denied.
4. Dan Stokes. About half the property is wetland buffer which cannot be developed. The appraiser did not account for this feature as he values Mr. Stokes' property in a similar manner to adjoining property assessed \$.19 a square foot where there is no evidence of wetland buffers.²³ Thus, the assessment should be reduced to \$1,800 to account for the reduced square footage of developable land.
5. Thomkat Investments, LLC. The primary objection is to the increased cost of the project and the increased percentage of the costs imposed on the property owners from what the preliminary assessment roll anticipated. The City has explained the history of this project and the reasons for the cost increases and the increased percentage borne by the property owners. However, the City has produced

²³ LID Parcels 151, 153 and 154

competent appraisal evidence that the special benefits still exceed the assessments, including the assessment on this property owner. The owner argues that the appraiser used a fundamentally wrong basis to arrive at his conclusions. However, the appraiser has explained the rationale for including reduction in stigma and aesthetic appeal as factors in determining market value. He claims this is backed up by his valuation analysis of property values. The owner has not provided any contrary evidence on this point. The owner also believes the appraiser speculated on the requirement for owners to complete half street improvements as a condition of redevelopment. However, the City has cited to code provisions that require such improvements. The fact that Thomkat's property is already improved does not invalidate an assessment. The completed improvements increase the property's value from a situation where there were no such improvements. Finally, the owner misunderstands the appraiser's methodology in arriving at valuation opinions. The appraiser did not utilize a front-foot basis. The appraiser conducted an appraisal of the property in a before and after scenario to arrive at special benefits. Any other objections are denied. The protest should be denied.

6. Pacific Southern, LLC. The property owner raises many of the same objections as the prior protest. The main objection is to the increased costs and increased percentage borne by the property owners. The owner argues that he did not have a meaningful opportunity to protest the LID since the preliminary assessments were substantially lower than the final, again due to an increase in costs and the lack of grant money that was anticipated at the time of LID formation. There is no statutory provision that requires a City to hold a new formation hearing upon a certain increase in estimated assessments. The Hearing Examiner is not aware of any court case that sets up a bright line or even a set of criteria that would require a new formation hearing if assessments will increase from the preliminary roll. The North Bend case (unpublished and thus not to be cited to the courts) involved a substantial change in the scope of the project (from a vacuum sewer to a much more expensive gravity sewer). Here the scope of the project did not change although costs did increase and anticipated public funding did not materialize. The property owner states that he would not have purchased 3 of the 6 parcels he now owns if he had known of the final assessments. While there is no dispute on this point, reliance on a preliminary assessment is not grounds to support an assertion that the City "deceived" the property owners. The City has explained that there is no overlap between the assessment and other fees and charges imposed by the City. The property owner argues that the market value established by the Pierce County Assessor are substantially less than the Macaulay appraisal. However, the property owner does not provide information on when the County Assessor made his appraisal and the assumptions about the then uncompleted LID project. Finally, the owner argues that the Macaulay appraisal used an incorrect square footage to determine FMV in the before and after situation. This is an extremely small amount equal to 2628 square feet or less than 1%.²⁴ A reduction

²⁴ About .89%

of \$6,281 would be justified. Other than as set forth above, the protest should be denied.

7. Hratch Tavitian. To the extent this protest relates to property in LID 78, the owner has failed to overcome the presumptions and therefore the protest should be denied.

IV. RECOMMENDATIONS

Based on the Findings and Conclusions set forth above, the Hearing Examiner makes the following recommendations:

1. Other than as set forth below, the Hearing Examiner recommends DENIAL of all other protests.
2. Dan Stokes, the assessment should be reduced to \$1,800.
3. Pacific Southern, the assessment should be reduced by \$6,281.

V. APPEAL

Pursuant to Section 3.40.105 SMC, any person who shall have timely filed objections to their assessments may appeal the recommendations of the Hearing Examiner regarding his/her property to the City Council by filing written notice of such appeal with the City Clerk no later than 14 calendar days after the date the Hearing Examiner's recommendation report is filed with the City Clerk.

DATED this _____ day of April 2019

HEARING EXAMINER

Wayne D. Tanaka

Date of Filing with the City Clerk: _____

EXHIBIT A
ON FILE WITH CITY CLERK
LID 78 - EXHIBITS

April 8, 2019

1. City's Staff Report together with Exhibits A-G
2. City's PowerPoint Presentation Slides
3. 136th Street LLC Protest Letter – LID Parcel Nos. 160, 169, 170 (Heyer & Morris)
4. Prestige Worldwide Holdings, LLC Protest Letter - LID Parcel Nos. 184,185,186
5. Gary S. Dhadda Protest Letter - LID Parcel No.165
6. Dan Stokes Protest Letter - LID Parcel No. 152
7. Thomkat Investments, LLC Protest Letter - LID Parcel No. 180
- 7b Hatch & Sons, LLC Protest Letter (Pacific only Parcel) – LID Parcel No. 147
8. Pacific Southern, LLC Protest Letter - LID Parcel Nos. 181,182,183,166,167,168
9. Pacific Southern, LLC Preliminary Assessment roll from Macaulay 2011 Preliminary Report
10. Supplement to Pacific Southern protest, three pages.
11. Letter from DiJulio in reply to Pacific Southern supplement
12. Macaulay Preliminary report