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March 29, 2017

City Clerk
 Hearing Examiner
 City of Tacoma
 747 Market Street
 Tacoma, WA 98402

RE: *William and Ann Riley's Objections to LID Assessments – Broadway LID No 8645*
LID Parcel Nos. 107, 108, 128, 131, 136, 137, 138, 146, 147

I represent William and Ann Riley, who own, or are members of entities that own the following parcels that are within the Broadway LID No. 8654.¹

LID	Tax Parcel	Street No. Broadway	Est. Assmnt	LID Assessment	Add'l Work	Total Assessment
107	200406-006-0	440	71,359	91,123		91,123
108	200406-007-0	454	95,668	122,084		122,084
128	200705-014-0	747-753	37,573	46,130	14,381	60,511
131	200706-001-6	702-704	36,187	57,949	18,132	76,081
136	200706-003-0	712-714	33,568	32,417	13,675	46,092
137	200706-004-0	718-720	33,568	32,417		32,417

¹ 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.

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LID	Tax Parcel	Street No. Broadway	Est. Assmnt	LID Assessment	Add'l Work	Total Assessment
138	200706-006-0	722	50,254	48,625	31,903	80,529
146	200706-009-0	736-738	33,568	77,704	5,310	83,014
147	200706-010-0	740-744	39,429	52,158	6,076	58,234

The Riley's object to the proposed assessments to the above properties because the properties were not benefitted by the Broadway LID improvements, or at a minimum, the value of any benefits are substantially lower than the proposed assessments. The assessments for additional work are not adequately documented and should also be removed from these properties where the City has not provided documentation.

ROLE OF THE HEARING EXAMINER

Of course the purpose of this hearing is to determine if the City's proposed special assessments for the Broadway LID comply with applicable law.

A special assessment is a charge imposed on property owners within a limited area to help pay the cost of a local improvement which specially benefits property within that area." When the government constructs a public improvement, such as a road, a waterworks, or a park, the real properties nearest to the improvement can derive a benefit greater than the general public. Correspondingly, these properties increase in value. If the property receives a "special benefit," the government may levy an assessment. If the property does not, an assessment would be a deprivation of property without due process of law. (Citations omitted.)

Carlisle v. Columbia Irrigation Dist., 168 Wn.2d 555, 569-70, 229 P.3d 761 (2010).

Special assessments cannot simply spread the costs of the improvements. Assessments must comply with two overriding principles: First, the property upon which assessments are imposed must be peculiarly benefited so that the owner does not, in fact, pay substantially more than he receives by reason of the improvement. Second, the property must not be assessed proportionately more than its share in relation to other parcels throughout the district. *Sterling Realty Co., v. City of Bellevue*, 68 Wn.2d 760, 415 P.2d 627 (1966); *Hasit, LLC, v. City of Edgewood*, 179 Wn. App. 917, 933, 329 P.3d 163 (2014).

The value of the special benefit from an LID is measured by the difference between the fair market value immediately before and immediately after the improvements – it is the increase in fair market value attributable to the local improvements. *Hasit, LLC, supra*, 179 Wn. App. at 933; *Kusky v. City of Goldendale*, 85 Wn. App 493, 498, 933 P.2d 430 (1997); *Doolittle v. City of Everett*, 114 Wn.2d 88, 93, 786 P.2d 253 (1990). Special assessments levied against any given parcel may not exceed the value of the special benefit conferred to that parcel solely by the improvement. *Hasit*, 179 Wn. App. at 933; *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993); *Doolittle*, 114 Wn.2d at 102-04. Likewise, no property should bear an assessment that is proportionately more than its share of the total assessment relative to other parcels in the LID. *Id.* An assessment against property which does not receive a special benefit from the improvements constitutes a deprivation of property without due process of law. *Hasit*, 179 Wn. App. at 933

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

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

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

Following proper notice, the hearing officer is required to “consider all objections” at the hearing. RCW 35.44.070. The hearing officer is to “sit as a board of equalization.” RCW 35.44.080(2). The role of a Board of Equalization is to “examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of property shall be entered on the assessment list at its true and fair value.” RCW 84.48.010. At the hearing, the hearing officer, sitting in its capacity as Board of Equalization, should thus “consider the objections made” and correct and revise the roll as necessary to ensure that it complies with the requirement set forth at RCW 35.44.070, which, again, is to proportionately assess costs to each property in accordance with the special benefits actually conferred to that property. RCW 35.44.080(3).

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

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

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

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

GENERAL OBJECTIONS TO LID ASSESSMENT PROCESS

By letter dated November 30, 2004, the City of Tacoma provided LID property owners with a Fact Sheet to inform them of the LID process. Through this Fact Sheet, the City advised the property owners: "Your first LID payment would be due approximately 18 months following completion of construction." (Exhibit 1.)

It is thus remarkable that the City did not mail the Notice of Assessment Hearing to the LID property owners until March 2, 2017 – almost seven years after the LID improvements were

completed. It is even more remarkable that, despite the seven year delay, when the City finally issued notices, it effectively only gave the LID property owners three weeks to analyze the City's proposed assessment roll and prepare objections.² Thus property owners were deprived of any meaningful opportunity to retain professional appraisers to bolster their objections.

Moreover, the information the City has provided is incomplete and, in many cases illegible. Promptly after receiving the notice, Riley requested a copy of the appraisal upon which the City relies to support its claim that the LID properties have been specially benefitted. On March 8, Riley received a draft Special Benefit study by Valbridge and Associates dated November 23, 2016. (Exhibit 4.) That appraisal provided information that was inconsistent with the information on the final assessment roll. In response to inquiry by Riley, he was advised that the City did not have the final report. Only yesterday, March 28, 2017, did Riley receive the final Special Benefit Study. Remarkably, this final study is dated January 20, 2017, so it is unclear why the City did not furnish the report earlier. Riley has not had sufficient time to evaluate the final report closely, especially the special benefit summary consisting of several pages of illegibly small print, to determine if there have been significant changes, but will note that the total special benefits declined by a million dollars from the draft report to the final report. No explanation is provided for the significant decrease. As a result of the decrease, the LID improvement costs comprise 97% of the alleged special benefit value to the LID properties.

Finally, we note that the assessments includes \$1,282,414 in interest. Allocation of this cost to the property owners is unconscionable. The City's 5-year delay to determine the assessment roll is not the fault of the property owners. The consequences of the City's dilatory actions are not appropriately passed to the property owners.

² Because the notices were not mailed until March 2 (Thursday), LID property owners, including William Riley, did not receive the notices until Monday March 6. Of course the hearing (and deadline to file objections) is March 29, 2017.

OBJECTIONS TO VALBRIDGE SPECIAL BENEFIT STUDY
The Appraisal Fails to Prove Special Benefit to Fully Developed Retail/Office Properties

All of the Riley LID parcels are in the Downtown Commercial Core District. With the exception of LID Parcel Nos. 107 and 108, located at 440 and 454 Broadway, all of the Riley properties are fully developed and will not likely be re-developed. Thus, any increase in utility capacity adds only nominal, if any value to these developed properties that are already being used for their highest and best use. LID Parcel Nos 128 (747-753 Broadway), 131 (702 Broadway), 136 (712-714 Broadway), 146 (736-738 Broadway) and 147 (740-744 Broadway) are all developed with commercial buildings for lease to retail or office tenants. LID Parcel Nos. 137 and 138 (718-720 and 722 Broadway) are developed with garages and leased for parking. While LID Parcel Nos. 107 and 108 (440 and 454 Broadway) are not developed with buildings, the property is paved and striped for 55 parking stalls and is leased for parking.

As noted earlier, the City's proposed assessments are based upon the Valbridge Property Advisors Broadway LID Special Benefit Study dated January 20, 2017. The Valbridge Report analyzed the subject LID area for two zoning districts, the Downtown Commercial Core District and the Downtown Residential District. Within the Downtown Commercial Core District, the Valbridge Report sets forth a "special benefit analysis" for commercial properties leased for retail and office, which is the portion of the study applicable to the Riley properties.

For commercial properties within the LID, the Valbridge report states that its valuation analysis is based on the application of the Income Approach with market rents and expenses applied for each property and capitalized into a value indication. (Valbridge Report at p. 4.) For the "before LID improvements" condition, the Valbridge Report applied base market rents for office and retail spaces within the LID from \$6.00 to \$8 per square foot. (Valbridge Report at p. 6.) The Valbridge Report does not set forth any "after LID improvements" base rents for these properties. Significantly, the current rents charged for the Riley office/retail spaces are all within the "before" market rents in the Valbridge Report.

The Valbridge Report describes the special benefits analysis as one that "studied the subject LID area's post project performance compared to nearby competitive areas and properties not within the LID and where street and utility upgrades have not been performed." (Valbridge Report at p. 7.) The final Valbridge Report described this comparative analysis as "part of" the special benefit analysis. (*Id.* at p. 7) Notably, in the November 21, 2016 draft Valbridge Report, the comparative study was described as the "primary" special benefit analysis. (Exhibit 3 at p. 7.) There is no change in the special benefit analysis itself, however, from the draft to the final Report. In fact, the only other research considered for the special benefits analysis for office and retail space was reference (in both the draft and

final report) to a 2014 New York study regarding street scape value, which the Valbridge Report acknowledges is “not definitive”. (Valbridge Report at p. 10.) So it is unclear why the descriptor for the comparative area analysis was changed from the “primary” special benefit analysis to only “part” of the analysis.

In any event, for office and retail properties, the Valbridge Report compared the post-LID improvement “performance” of the LID area with “performance” of office and retail space in four other areas. (Valbridge Report at pp. 7-8.) The Report explains the premise of the comparative study at page 8:

The subject LID area has experienced a full upgrade of its utility and overall street scape infrastructure. The benefit of the street scape improvement can be compared to the test areas where inconsistent infrastructure exists. Our research of the competitive market areas indicates this to generally be the case, although the benefit of the utility upgrades, while more direct and tangible for redevelopment sites, they are less visible and likely underrepresented by the following comparisons.³

The comparative analysis of the data for the respective areas was performed in July 2014 and utilized recent data as well as five-year averages (presumably for 2009 through 2014). (*Id.* at pp. 8-9.) Though Valbridge collected rent data for the comparative areas, rents were not among the “performance indicators” evaluated by the Valbridge Report. Rather, the Valbridge special benefit analysis compared only vacancy rates, particular decreases in vacancy rates, and “walkability scores, which data is set forth at page 9 of the Report.

³ The draft Valbridge described the concept differently – it was described more as a hypothesis that the appraisers set out to prove:

The subject LID area has experienced a full upgrade of its utility and overall street scape infrastructure. If special benefits exist, the subject area should perform better than those test areas where inconsistent infrastructure exists. Our research of the competitive market areas indicates this to be the case. (Emphasis added.)

Exhibit 4 at p. 8.

Office/Retail Statistics

Area	Walkability Score	Total # of Buildings	Current Vacancy Rate	5 Year Average Vacancy Rate
Subject LID	93	32	4.10%	13.70%
Area 1	93	46	4.50%	7.60%
Area 2	88	26	15.30%	11.20%
Area 3	89	27	19.30%	10.80%
Area 4	71	25	6.50%	4.90%

The Valbridge Report took particular note that, for the LID area, “vacancy has dropped in the subject area dramatically since the LID improvements.” (Valbridge Report at p. 9.) The Report noted that vacancy rates in three of the other four areas increased as compared to the five-year average and decreased substantially less for the fourth area. (*id.*) Valbridge reported this as a favorable indicator that would demonstrate that the street scape improvements increased the value of the LID properties, though there was not attempt in the appraisal to quantify this purported increase in value.

Valbridge fails to take into account, however, that the five-year average vacancy rate for the LID area, which was indeed very high, was a reflection of that fact that LID properties were subject to prolonged disruption during the 33 month LID construction period. Construction commenced on the Broadway LID improvements in October 2008 and was not completed until August 1, 2011. During that period, accessibility to the LID properties was extremely difficult and this lack of access resulted in a significant negative impact on the vacancy rates of the LID properties and the rents that could be charged.

The impact to the Riley properties was substantial. Prior to the LID improvements, Riley experienced no difficulty in leasing his office/retail space or his garage space. Notably, Riley had never experienced tenant complaints based on the quality of the street scape improvements and likewise did not experience difficulty leasing as a result of the quality of the street scape improvements. During the 33-month LID construction period, however, Riley lost tenants and was forced to dramatically reduce rents to maintain occupancy.

- LID Parcel 128 (747-753 Broadway) – Riley lost two tenants. To retain one tenant and to re-let another space, Riley was forced to cut rents in half. In one space,