City of Edgewood
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NOTICE OF HEARING EXAMINER'S RECOMMENDATION ON THE ASSESSMENT ROLL FOR LOCAL IMPROVEMENT DISTRICT NO. 1 CITY OF EDGEWOOD, WASHINGTON

NOTICE IS GIVEN that the assessment roll hearing for Local Improvement District No. 1 created by Ordinance No. 08-0306 was held on June 1, 2011. I considered all of the written objections received prior to the hearing and all oral testimony and written testimony presented at the hearing. Attached is my written recommendation to the Edgewood City Council. Any property owner that filed a written objection prior to or during the hearing may appeal my recommendation by filing a written appeal with the City Clerk at the Edgewood City Hall, 2224-104th Avenue East, Edgewood, Washington, in accordance with Ordinance No. 11-0361. The City Council will consider all appeals and you will receive a notice of that decision.

Dated June 30, 2011

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

OFFICE OF THE HEARING EXAMINER

CITY OF EDGEWOOD

REPORT AND RECOMMENDATION

CASE NO.: **Edgewood Local Improvement District #1**
Final Assessment Roll Hearing

SUMMARY OF REQUEST:

To hear protests of the Final Assessment Roll for Local Improvement District #1 and make recommendations to the Edgewood City Council.

SUMMARY OF RECOMMENDATION:

See Recommendation

PUBLIC HEARING:

After reviewing Planning and Community Development Department Staff report and examining available information and protests received by the City, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 1, 2011, at 6:00 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Planning and Community Development Department Staff Report and Attachments
EXHIBIT "2" - Awarded Bid and Council Minutes
EXHIBIT "3" - Acceptance of Work and Council Minutes
EXHIBIT "4" - Spread Sheet Showing Performance Payments
EXHIBIT "5" - Résumé or CV of Macaulay and Associates, LTD
EXHIBIT "6" - Letter from Carolyn Lake
EXHIBIT "7" - City Response to Ms. Lake
EXHIBIT "8" - City's Cover Letter to Hearing Examiner
EXHIBIT "9" - City's Pre-Hearing Brief
EXHIBIT"10" - Selection of Zoning Ordinances
EXHIBIT"11" - Protest from Carol Davis
EXHIBIT"12" - Protest from Enid and Edward Duncan

EXHIBIT"13" - Protest from Robert Knutsen
EXHIBIT"14" - Protest from Eugene Craig
EXHIBIT"15" - Protest from Jay Marshall
EXHIBIT"16" - Protest from Ray Rempel
EXHIBIT"17" - Protest from William and Donna O'Ravez
EXHIBIT"18" - Protest from Wendal Kuecker
EXHIBIT"19" - Protest from James & Patricia Schmidt & Darlene Masters
EXHIBIT"20" - Protest from Donald and Sandra Hawkins
EXHIBIT"21" - Protest from Ronald O. Acosta, D.C.
EXHIBIT"22" - Protest from Maygan Hurst/Hasit LLC
EXHIBIT"23" - Protest from Stephen Janho
EXHIBIT"24" - Protest from Doug Hutchens
EXHIBIT"25" - Protest from George and Arlyn Skarich
EXHIBIT"26" - Protest from Chong and Young Yi
EXHIBIT"27" - Protest from Arven and Gail Nybo
EXHIBIT"28" - Protest from Dexter Meacham
EXHIBIT"29" - Protest from Janice Brennan and Susan Henricksen
EXHIBIT"30" - Protest from Eric Docken
EXHIBIT"31" - Declaration of John Trueman
EXHIBIT"32" - Carolyn Lake Submittal on Behalf of Docken Protest
EXHIBIT"33" - Protest from 1999 Stokes Family LLC Submitted by Margaret Archer
EXHIBIT"34" - Protest from Ryan Snider
EXHIBIT"35" - Protest from North Meridian Associates Submitted by Ken Luce
EXHIBIT"36" - Protest from Mattie Eby
EXHIBIT"37" - Ordinance 07-0279, Ordinance 07-0282, and Traffic Map
EXHIBIT"38" - Affidavit of Publication of Notice for Hearing
EXHIBIT"39" - Letter from Ray E. Rempel dated June 3, 2011
EXHIBIT"40" - Letter from Ray E. Rempel dated June 7, 2011
EXHIBIT"41" - Letter from Stephen Janho dated June 8, 2011
EXHIBIT"42" - Letter from Jon H. Rogers D.C.
EXHIBIT"43" - Letter from Carolyn A. Lake dated June 8, 2011
EXHIBIT"44" - Letter from William and Donna O'Ravez dated June 8, 2011
EXHIBIT"45" - Letter from Margaret Y. Archer dated June 8, 2011
EXHIBIT"46" - Correction letter from Margaret Y. Archer dated June 9, 2011
EXHIBIT"47" - Letter from Wayne D. Tanaka dated June 15, 2011
EXHIBIT"48" - Email from Carolyn A. Lake dated June 24, 2011
EXHIBIT"49" - Letter from Wayne D. Tanaka dated June 28, 2011

The Examiner took the matter under advisement. No minutes are provided herein as a court reporter prepared a verbatim transcript. The hearing was concluded at 10:03 p.m.

NOTE: A complete record of this hearing is available in the office of City of Edgewood Planning and Community Development Department.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS:

FINDINGS:

1. Pursuant to the authority set forth in RCW 35.44.070, the Edgewood City Council appointed the Examiner as a special Hearing Examiner to preside over and conduct the final assessment roll hearing for Local Improvement District No. 1 (LID #1) and to consider all protests to the final assessment roll and make a recommendation to the City Council regarding such protests.

2. The Council appointed the Examiner in Ordinance No. 11-0361 adopted on April 26, 2011, and effective May 9, 2011.

3. The procedures leading to the City Council actions in adopting LID #1 are set forth in the City Staff Report (Exhibit 1). In summary, the City developed a General Sewer Plan (GSP) utilizing a lengthy public process that began in 2002 and ended in 2007. The Council established a sewer utility pursuant to Ordinance 05-0249 dated June 28, 2005. During development of the GSP the City considered several conveyance and treatment options and on January 23, 2007, entered into an interlocal agreement with the Lakehaven Utility District to provide wastewater treatment operations and maintenance services for much of the City's Phase 1 sewer service area. The State Department of Ecology (DOE) approved the GSP and the City Council adopted it on December 11, 2007, in Ordinance 07-0298.

4. Property owners within the Phase 1 sewer service area circulated petitions to form a LID for sewers and by July, 2008, the City had received petitions that represented 81 parcels and more than 70 percent of the proposed LID area. Pursuant to said petitions, on August 12, 2008, the City Council passed Resolution 08-242 declaring its intent to form LID #1. The total land area within the LID would equal approximately 312 acres and parcels within the LID generally paralleled SR-161. On October 28, 2008, the City Council passed Ordinance 08-0306 and formed LID #1.

5. The City then proceeded to acquire interim financing from U.S. Bank in March, 2009, and obtained a low interest federal guaranteed loan from the United States Department of Agriculture Rural Development Program. Construction of the sewer facilities commenced in January, 2010, and completed by March 31, 2011. At the time of LID formation the City estimated the cost for the LID at $23,304,000. The project was completed at a total cost of $21,238,268. (testimony of Bourne and Staff Report).

6. In October, 2009, the City engaged Macaulay and Associates, LTD (Macaulay), to determine the final special benefit assessments for parcels within LID #1. Macaulay began its work in December, 2010, and submitted a Final Special

Benefit/Proportionate Assessment Study (Study) to the City dated May 10, 2011 (Exhibit 1L). Based on said Study, the City provided notice to property owners of the amount of their final assessments along with a copy of Ordinance 11-0361 that set the hearing date for consideration of appeals and specified the procedures for appeals. Pursuant to said ordinance the Examiner conducted a public hearing on June 1, 2011, that commenced at 6:00 p.m. and concluded at 10:03 p.m. Prior to and during said hearing 24 property owners/representatives submitted protests of assessments on 41 parcels of property. All of such appeals were timely filed. However, a protest filed by Jon Rogers, D.C., for LID parcels 55 and 56 was not filed until June 8, 2011, and pursuant to Ordinance 11-0361 and RCW 35.44.080 and 35.44.110, neither the Examiner nor the City Council may consider the Rogers' protest.

7. Pursuant to RCW 35.44.100 the Examiner makes recommendations to the City Council as to whether it should:

> ...correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the role by ordinance.

In making his recommendations to the City Council the Examiner has applied the presumptions in determining LID protests as required by our Washington Supreme Court in Abbenhaus v Yakima, 89 Wn. 2d 855 (1978), as follows:

A. The City's action in forming the LID and its assessments are correct.
B. A property owner challenging the assessment has the burden of proving its correctness.
C. The City has acted legally and properly.
D. An improvement is a benefit to the property.
E. An assessment is no greater than the benefit.
F. An assessment is equal or ratable to an assessment upon other property similarly situated.
G. The assessment is fair.

The Supreme Court also required those challenging assessments to present expert appraisals substantiating their position:

> Appellants' claims of unfairness made before the City Council, without supporting evidence of appraisal values and benefits, are inadequate to overcome these presumptions of fairness and appearance of correctness. There is insufficient support in the record for us to concur in their assertions that the assessment was computed upon a fundamentally wrong basis and that the City Council's action was arbitrary and capricious. 89 Wn. 2d 855 @ 861 (emphasis added)

The Washington Court of Appeals in Cammack v. Port Angeles, 15 Wn App. 188 (1976), reached the same conclusion:

> Expert evidence is clearly required to establish whether or not property is specially benefitted by an improvement and the extent of the benefit. Expert testimony also may be required to establish a disproportionate assessment. 15 Wn. App. 188 @ 197

Thus, a party challenging a final assessment must present expert appraisal evidence that their property is either not benefitted by the improvement or that "their assessment is not equal or ratable to assessments of other property similarly situated". Those protesting an assessment have a heavy burden of proof, as held by our Court of Appeals in Kusky v City of Goldendale, Wn. App. 493 (1997):

> Even if the presumption of an assessment's validity is successfully rebutted, however, the objector must still show that the assessment was founded on a fundamentally wrong basis or was imposed arbitrarily or capriciously...A city council proceeds on a fundamentally wrong basis if it uses a method of assessments so flawed that it necessitates a nullification of the entire LID...An arbitrary and capricious action refers to legislative decisions (such as the decision of the council here) made willfully and unreasonably, without regard or consideration of facts or circumstances....85 Wn. App. 493 @ 500

With the above in mind recommendations on the various protests are made hereinafter.

8. In a letter dated May 27, 2011, Carolyn Lake, attorney at law representing "various City of Edgewood property owners" and specifically Eric Docken and Docken Properties LP, owners of LID parcels 131, 133, and 140, requested that the City continue the June 1, 2011, hearing based upon flawed notice. The city attorney responded to Ms. Lake by letter dated May 31, 2011, and further in his written closing argument dated June 15, 2011. Several protestors adopted Ms. Lake's reasons for requesting a continuance. The City Council pursuant to RCW 35.44.070 appointed the Examiner to "make recommendations to such legislative authority which shall either adopt or reject the recommendations of the committee or officer". Ordinance 11-0361 requires the Examiner to "consider the objections to the final assessment roll and may lower one or more assessments or confirm the roll as prepared". Neither the RCW nor Ordinance 11-0361 grants the Examiner authority to rule on the legalities of the establishment of the LID, nor on the notice and other procedures prior to the public hearing. The Examiner must assume that the City provided notice and performed other procedural requirements in a proper manner. Thus, the Examiner has no authority to continue the hearing. Furthermore, based upon the above referenced letters and other Exhibits in the file, it appears that the City provided proper notice and followed other procedural requirements as well. See Exhibit 7, the city attorney's response to the continuance request.

9. The Final Special Benefit/Proportionate Assessment Study prepared by Macaulay and Associates, LTD, shows that the appraisers estimated the current market value of each assessable parcel both without and with the LID project completed. The appraisers perform their task by conducting independent investigations and analyses to include demographic information, land use policies and trends, growth forecasts, and employment statistics. Macaulay made field inspections of the exterior of the subject parcels and based parcel areas on information from the City. The City also provided information on wetlands and other unusable areas. Where considered appropriate the appraisers used valuation approaches consisting of the income approach, sales comparison approach, and cost approach. The appraisers did not prepare individual parcel appraisal reports, but did prepare market value conclusions for each parcel both without and with the LID. The appraisers also maintained proportionality among the special benefit estimates and treated properties consistently to most accurately reflect the special benefit indicated by the market. Macaulay in discussions with real estate brokers found that property in the City cannot compete with surrounding markets due to lack of sewers. An example is the absence of restaurants and larger retail centers within the City as are present in the City of Milton across SR-161. Macaulay notes that the lack of sanitary sewer service significantly, adversely impacts site preparation costs, allowable density, and ability to develop property. The LID will improve the competitive position of parcels within the City. Special benefits in addition to the increase in development density include decreasing the negative stigma associated with septic systems and permitting a wider variety of uses. Completion of the LID will enhance the entire vicinity's reputation, aesthetic appeal, and character, and will create a more desirable location for commercial property. Indeed in the "without LID" scenario the intensity of uses will remain low in many instances due to poor soil conditions and reliance on on-site septic systems. Macaulay noted that the current pace of commercial development is slow due in part to the economic recession, and anticipates that future absorption of available development land will be modest due to the large supply. Macaulay applied a significant discount in recognition of the slow absorption and longer holding periods, especially for those parcels zoned single-family residential. However, Macaulay also noted that due to the City's close location to surrounding built-up cities, it is poised for considerable, future, potential growth and development. Commencing on Page 91 of the study Macaulay identifies listings and sales for comparable properties. Finally, Macaulay took into consideration:

> ...such factors as highest and best use, zoning and physical characteristics including parcel size, configuration, road frontage, topography, available utilities, usable area and existing improvements (Page 63 of Study).

10. Protestors assert that the City's appraisers should have utilized the "zone and termini formula" to establish the special benefit and assessment. However, RCW 35.44.047 authorizes the City to use other methods or combinations of methods to

compute assessments that it deems would more fairly reflect the special benefits to the properties assessed. See also Tiffany Family Trust Corp. v City of Kent, 155 Wn. 2d 225 (2005). Furthermore, in Hansen v Local Improvement District # 335, 54 Wn. App. 257 (1989), our Court of Appeals interpreted RCW 35.44.047 and held:

> ...Where there is a presumption that the City acted properly, there is logically no need for the City to produce evidence that it considered various methods of assessment before reaching its presumptively correct decision...
>
> ...Even if the City is required to make a record demonstrating that it considered the merits of using a particular method of assessment, slight evidence is all that is necessary to meet this requirement. Only requiring a minimal quantum of proof conforms with the strong presumption in favor of the City's assessment decision. 54 Wn. App. 257 @ 261, 262

The testimony of the appraiser, Robert Macaulay, as well as his "Final Special Benefit/Proportionate Assessment Study" (Exhibit 1L) set forth the reasons why the utilization of the special benefit methodology is more appropriate in the present case. Such satisfies the requirements of RCW 35.44.047 as interpreted by our Court of Appeals in Hansen, supra.

11. Protestors also assert that the final assessment is flawed because the City required the contractor to utilize larger pipes and pumps that would accommodate nearby properties that later may connect to the sewer system. However, the City Council did not adopt a latecomer's reimbursement agreement pursuant to RCW Chapter 35.91. Protestors assert that the City is providing a general benefit to other parcels in the area by assessing their parcels. Again, the issue of a latecomer's agreement is within the jurisdiction of the Edgewood City Council. The Council's decision to not adopt a latecomer's agreement ordinance does not affect the validity of the LID and is beyond the scope of the hearing.

12. Enid and Edward Duncan own LID Parcel No. 2 and submitted a protest admitted into the record as Exhibit 12. Doug Hutchens on behalf of Plemmons Hutchens, LLC, submitted a protest for LID Parcel Nos. 35, 36, 37, and 38 accepted into the record as Exhibit 24. Portions of both protests assert that the City assigned more acreage to their parcels than they own. Both parties therefore ask for a reduction in their assessment based upon the reduced parcel size. However, Gary Bourne, BHC Consultants, testified that the City became aware of discrepancies in property size from files maintained by the Pierce County Assessor and Pierce County Auditor. Both offices share files called "Metadata", a GIS informational file. Mr. Bourne contacted the County which advised him that:

> ...The most accurate files are the Metadata files and the GIS files, and that's what we use, and that's what was used by Mr. Macaulay on the assessment spreadsheet. They are using GIS data files, which shows 9.1 acres for the

Duncan property and not 8.1, which is on record at the Assessors Office. (Page 123 verbatim record of proceedings)

The City used the same Metadata/GIS files to determine the square footage of all properties within LID #1. Thus, all parcels' sizes as shown on the Macaulay spreadsheet are accurate.

13. In support of his protest Mr. Hutchens also submitted an appraisal of vacant land owned by the LLC and located at 6025 Meridian Avenue East, Edgewood, dated June 2, 2008. However, the appraisal does not establish a "with LID" and "without LID" value and thus does not purport to analyze the special benefit received by the properties. Furthermore, market conditions have changed substantially since June 2, 2008, the date of the appraisal. Therefore, the City Council should approve the special benefit assessment for both the Duncan and Plemmons Hutchens parcels.

14. Ken Luce, attorney at law, submitted a protest for Parcel Nos. 123, 125, and 130 owned by North Meridian Associates, et. al. Mr. Luce submitted a letter from Mark Percival, President, Percival and Associates, LLC, a real estate appraisal firm (Exhibit 35A). In his letter Mr. Percival asserts that the Macaulay spreadsheet identifies all three parcels as zoned Town Center (TC), the highest assessed parcels. Mr. Percival asserts that according to the colored zoning map Parcel No. 123 is TC, Parcel No. 125 is Public (P), and Parcel No. 130 is Mixed Use Residential (MUR). The "Recommended Assessment Roll" spreadsheet contained in the Study shows Parcels Nos. 123 and 125 within the TC classification and Parcel No. 130 a split zone MUR/SF-3 zoned parcel. The colored zoning map (Exhibit B to Exhibit 1) shows Parcels 123 and 125 within the TC classification. The map shows a substantial portion of Parcel 130 within the MUR classification and a small part within the Single-Family Moderate Density (SF3) classification. However, depending upon the location of the property line, the map shows a portion of Parcel 130 located within the P zone classification. Parcel 128 abutting the north property line of Parcel 130 is reflected as within the MUR classification, but is similarly impacted by the P zone parcel. In his recommendation hereinafter the Examiner requests that the City investigate the zoning of Parcel 130 and make adjustments if appropriate to account for the portion of the parcel within the P classification.

15. The Percival and Associates, Inc., letter does not provide an appraisal of the said parcels but has general comments regarding the location of said parcels and the planning of future development. Such does not provide sufficient proof to overturn the Macaulay special benefits assessment.

16. The following property owners submitted no expert appraisal, other expert testimony, or expert evidence substantiating their protest:

A. Carol Davis, LID Parcel No. 70, Exhibit 11
B. Enid and Edward Duncan, LID Parcel No. 2, Exhibit 12

C. Eugene Craig, LID Parcel No. 114, Exhibit 14
D. Jay Marshall, LID Parcel No. 43, Exhibit 15
E. Ray Rempel, LID Parcel No. 68, Exhibit 16
F. Wendal Kuecker, LID Parcel No. 146, Exhibit 18
G. James and Patricia Schmidt/Darlene Masters, LID Parcel Nos. 71 and 79, Exhibit 19
H. Donald and Sandra Hawkins, LID Parcel No.8, Exhibit 20
I. Ronald O. Acosta, D.C., LID Parcel No. 128, Exhibit 21
J. George and Arlyn Skarich, LID Parcel No. 115, Exhibit 25
K. Arven and Gail Nybo, LID Parcel No. 49, Exhibit 27
L. Dexter Meacham, LID Parcel No. 31, Exhibit 28
M. Janice Brennan/Susan Henricksen, LID Parcel No. 25, Exhibit 29
N. Ryan Snider/ODS Investments, LID Parcel No. 22, Exhibit 34
O. Mattie Eby, LID Parcel No. 74, Exhibit 36

Since none of the above listed property owners submitted expert appraisal testimony or expert evidence to substantiate their protests, in accordance with the Washington Supreme Court's decision in Abbenhaus v Yakima, supra, and Hansen v LID, supra, the City Council should uphold the assessments for said parcels and reject the protests.

17. Maygan Hurst, attorney at law, submitted a protest on behalf of Hasit, LLC, for LID Parcels 10, 16, and 18 (Exhibit 12). Hasit argues that wetlands and buffers impact parcels 10 and 16 to a much greater extent than determined by the City and the Study. Hasit submitted a wetland delineation report prepared by ICF Jones and Stokes showing that approximately one-half of its site is unusable due to wetlands and buffers. However, the City points out that said wetland delineation report was only a draft, contained significant errors, and was never accepted by the City. Furthermore, the City's critical area maps do not show extensive wetlands on parcels 10 and 16. While Hasit has obtained a reduction in the assessed value of its lots, such reduction was apparently based on the ICF Jones and Stokes report and not on the City's critical areas map nor any wetland delineation approved by the City. Finally, neither the author of the report or other expert appeared at the hearing that the City have examine. Macaulay worked closely with City staff and determined that the parcels did support wetlands and buffers, but substantially less than the amount asserted by Hasit. The City Community Development staff and Public Works met with the appraiser and transmitted a number of accepted reports that the City had on file for a number of properties and also discussed the limitation of critical areas on development of the site. The City also utilized the National Wetland Inventory Map and recorded information pursuant to a GIS system. The critical areas map does not purport to delineate every wetland on every parcel within the City, and the City is not required to delineate every parcel within the LID. Therefore, based upon RCW and court standards, the City did not error in utilizing its maps and GIS system to estimate the wetlands and buffers on the Hasit, LLC, parcels.

18. Hasit, LLC, also submitted a letter from an appraiser dated May 27, 2011, addressing the final assessment on Parcel 18. The appraiser contends that the only portion of Parcel 18 that benefits from the LID is the portion set aside for an on-site septic disposal system. The appraiser estimates the special benefit to Parcel 18 at $89,559. as compared with the recommended assessment of $194,563. Hasit, LLC, also submitted a letter from Cole Septic Design, Inc., that excavated on-site soils and found that "The optimum soil conditions on this parcel provide high quality treatment value that results in smaller less expensive on-site sewage systems". However, neither the appraiser nor the septic designer appeared at the hearing, and therefore the City did not have the opportunity to cross-examine either expert.

19. The Cole Septic Design report also reflects that on-site systems will need to provide timed dosing and/or pressure distribution, and that Cole will need to perform further studies before proceeding with a design. The designer does not estimate the cost of installation of the on-site septic systems nor the cost of maintenance and testing as required by the Tacoma Pierce County Health Department. Furthermore, the appraisal from Washington Valuation and Consulting Services provides that Parcel 18 could support "development of a commercial facility without sewer". However, the appraiser does not indicate either the type of commercial use or its intensity. Furthermore, the appraisal does not provide a before and after LID market value of the parcel. As set forth in the Study, lack of sanitary sewer service has significant adverse impacts on site preparation costs and allowable density, and intensity of development. Hasit, LLC, and other property owners within the LID may improve their parcels with more intense uses to include greater height allowances that could not occur without a sewage system. The Washington Valuation and Consulting Services report does not mention these factors.

20. Hasit, LLC, also raises an issue regarding the impact on its parcels of the Jovita Boulevard realignment project. However, Hasit did not present expert testimony on this issue and could not have due to the speculative nature of the project (configuration) and whether it would ever be constructed. Furthermore, neither Ordinance 11-0361 nor the RCW require consideration of either potential extensions of roads or other potential clouds on title in determining an assessment. Parcels must be assessed in accordance with their highest and best use regardless of a potential Jovita Boulevard extension. Hasit, LLC, has not submitted expert testimony sufficient to reduce its recommended assessment pursuant to the RCW's and Hansen v LID, supra.

21. Stephen Janho, Pastor of Edgewood Bible Church, challenges the assessments on LID Parcel Nos.59, 61, 63, and 66 based upon an appraisal submitted by Dennis Wick, Wick and Associates. The appraiser did not appear at the hearing, and as set forth in his report, did not inspect the four parcels or any properties set forth in the comparable sales listed in his report. Finally, the appraiser assumes

development of the parcels into single-family residential lots and no commercial uses. Therefore, the Church has not provided sufficient evidence to overcome the presumption of correctness of the assessment. However, upon further review Macaulay agrees that no special benefit will occur to Lot 66 due to its small size and lack of development potential. Therefore, Macaulay has determined that said lot should have a special benefit of zero. Such would reduce the final assessment for the overall Church parcels from $203,586. to $167,474.

22. Ray E. Rempel timely filed a protest on behalf of the property owners of LID Parcel No. 68 owned by the Ray E. and Eldean Rempel Trust and Tina Rempel and located at 1914 Meridian East. The parcel contains 7.22 acres and has no critical or unusable areas. Macaulay estimated a "before LID" land value of $3.50 per square foot which calculates to $1,100,000. The improvements on the site raise the value by $225,000 to $1,325,000. Macaulay then determined that the Rempel parcel would have an "after LID" value of $8.00 per square foot or $2,515,000. The special benefit to the parcel is $3.79 per square foot or $1,190,000, which calculates to a recommended assessment of $2.79 per square foot or $877,005. Mr. Rempel submitted no expert testimony or exhibits prepared by an expert at the hearing and thus his protest should be rejected. Subsequent to the hearing and the closing of the record Mr. Rempel submitted a document entitled "Estimated Market Value" prepared by the Washington State Department of Transportation (WSDOT)that was used in determining a price for a portion of the Rempel parcel purchased for the SR-161 widening project. Because of the late submittal the City Council should not consider the said appraisal. Even so, the WSDOT appraisal did not provide a full appraisal for the entire parcel, and the appraisal is dated February 7, 2008, when market conditions were substantially different. Furthermore, had WSDOT not succeeded in arriving at a purchase price, it would have commenced condemnation action and thus the transaction would not be considered "arms length".

23. In his appeal Mr. Rempel compares his land valuation to nearby and abutting parcels. However, all of such parcels are substantially smaller, are much closer to SR-161, and the Rempel parcel abuts Meridian at its narrowest point. Thus, the special benefit as determined by Macaulay together with the recommended assessment is reasonable.

24. William and Donna O'Ravez own LID Parcel No. 73, which is addressed 2011 to 2017 Meridian East and contains 7.89 acres, all of which is usable. Macaulay valued the O'Ravez parcel without the LID at $2.30 per square foot, which together with the improvements, calculated to a total market value without the LID of $961,000. Macaulay determined that with the LID the land value would increase to $6.55 per square foot for a total of $2,251,000, and that the special benefit to the parcel would equal $1,290,000. or $3.75 per square foot. Such calculates to a recommended assessment of $950,703. O'Ravez submitted a protest dated May 31, 2011, and a final argument dated June 8, 2011. The protest included an

appraisal from DRB Appraisal Services dated December 18, 2009. However, DRB did not submit a full appraisal and combined Parcel 72 owned by the 1999 O'Ravez Family, LLC, along with LID Parcel 73. Furthermore, the City formed the LID prior to completion of the appraisal and the sewer project would have influenced property values. O'Ravez also submitted the first page of a WSDOT offer to purchase property in association with the SR-161 widening project. The appraisal is dated July 22, 2008, during different market conditions and is not representative of an "arms length" transaction. Furthermore, neither appraiser appeared at the hearing for cross-examination by the City.

25. O'Ravez also compared their property value to surrounding parcels and noted that such parcels have a higher "before LID" value. Macaulay notes that the O'Ravez parcel is split zoned, has a long, narrow, irregular configuration, and is very large. Macaulay concludes that these factors decrease the overall per square foot, "before LID" value as compared to many nearby parcels. In their closing argument O'Ravez asserts that they have talked with developers who say that densities higher than 16 to 24 dwelling units per acre (DUA) does not pencil out and that Macaulay used 30 DUA for densities in the (T) zoned properties. Macaulay utilized 20 to 26 dwelling units per acre in its analysis of the Commercial (C) and TC zone classifications.

26. In a re-review of the O'Ravez appeal Macaulay recognized a "slight inconsistency" in the "without LID" land value for the O'Ravez parcel and recommends an increase in said value to $2.60 per square foot for a total of $894,000. Such increases the "without LID" market value to $1,064,000 from $961,000 and results in a decrease of the special benefit to $1,187,000 from $1,290,000. Such calculates to a recommended assessment of $878,380 for LID Parcel No. 73.

27. Margaret Archer, attorney at law appeared at the hearing, submitted a protest on behalf of the 1999 Stokes Family, LLC (Stokes), and testified that she represents Stokes, which owns LID Parcel No. 27. Said parcel consists of 7.67 acres and is located at 909 Meridian East. The parcel has 150,000 square feet of critical/unusable area and 183,977 square feet of usable area. Macaulay valued the "without LID" usable area at $3.30 per square foot for a total value of $687,000. Macaulay valued the property "with LID" at $7.20 per square foot for a total value of $1,325,000. Thus, the special benefit calculates to $718,000 and the recommended assessment calculates to $529,151. Ms. Archer does not disagree that the Stokes parcel is benefitted by the LID, but asserts that the proposed assessment "is grossly disproportionate to the assessment charged against similarly situated parcels and is well outside Macaulay and Associates' own range of assessments to be applied to property of this type and location" (Exhibit 33). Ms. Archer asserts that the assessment should be reduced from its present $3.90 per square foot to $2.05 per square foot for the entire parcel. Of the usable area, 106,700 square feet is located within the (C) zone classification and 77,277 square feet within the MR-2 classification. However, the Stokes family did not present appraisal testimony to substantiate its position, but relied upon cross-examination to

discredit the Study. In written closing argument Ms. Archer asserts that Macaulay did not follow the "Uniform Standards of Professional Appraisal Practice" in performance of its mass appraisal. Macaulay disputes said allegation and asserts that it did follow all standards and requirements of the Uniform Standards. The Stokes family presented no expert testimony that Macaulay did not do so.

28. Where, as in the Stokes appeal, a property owner concedes special benefit to its parcel, but disagrees with the appraisal, the property owner must show that the recommended assessment is arbitrary. With no expert testimony in the record contradicting Macaulay's testimony that it followed the Uniform Standards in conducting the mass appraisal, the Examiner must conclude that the assessment is reasonable. Furthermore, the assessed value of the MR-2 portion of the Stokes property is not inconsistent with the Study. Comparison of assessments for other parcels is difficult since all parcels are different. The Stokes' parcel is unique since it is split zoned and has frontage on Meridian. Such factors separate it from adjoining M-2 properties. The comparison with LID Parcel No. 34 is not valid since said parcel has no frontage on Meridian and will incur extensive sewer connection costs.

29. Following review of the Stokes protest, Macaulay noted a clerical error in its report as it had included an $80,000 improvement value to the "with LID" market value. Since development of the site with the highest and best use would eliminate said improvement, the "with LID" value is reducing by $80,000 and the recommended assessment reduced to $472,120.

30. Carolyn Lake, attorney at law, submitted a letter dated June 24, 2011, asking that the Examiner strike the letter from Robert J. Macaulay dated June 13, 2011, attached to the City's closing argument dated June 15, 2011, as it constitutes new evidence. The Macaulay letter does not address the parcel owned by Ms. Lake's identified clients Eric Docken and Docken Properties LP. Ms. Lake both testified and wrote in her letter dated June 1, 2011, that she represented various City of Edgewood property owners whose properties lie within LID #1. However, Ms. Lake declined to identify those property owners. No other attorney or property owner has requested the Examiner to strike Mr. Macaulay's letter. Therefore, the Examiner has not considered Mr. Macaulay's letter in evaluating the Docken appeal.

31. On June 1, 2011, Ms. Lake submitted a protest for Eric Docken and Docken Properties LP owners of LID Parcel Nos. 131, 133, and 140. The protest alleged procedural errors that were addressed hereinabove and also asserts that the zoning ordinances upon which the special assessments are based are likewise flawed. Such issues are beyond the Examiner's authority to consider. Ms. Lake then asserts that the Study is flawed, to include its inconsistency with the Pierce County Buildable Lands Report.

32. Ms. Lake also submitted a declaration of John Trueman, MIA, in support of the

"Flawed Study". Mr. Trueman's two page declaration questions whether the sewer project is a benefit any of the parcels within the LID. Mr. Trueman's declaration does not contain an appraisal of the Docken parcels "without LID" and "with LID". The City's zoning changes and the ability to more intensively develop property provides significant and uncontradicted evidence that sewers will provide a special benefit to property owners within the LID. The Buildable Land Report does not address individual properties and neither Ms. Lake nor Docken presented evidence that any portion of Mr. Docken's or Docken Properties LP is unusable. The City Council should reject the Docken protest.

CONCLUSIONS:

1. No protesting property owner has carried its required burden of proof of showing that its final assessment is founded on a fundamentally wrong basis and/or that the City's appraisers Final Special Benefit/Proportionate Assessment Study is arbitrary or capricious. No challenging party has presented expert appraisal evidence that shows property within the LID is not benefitted by the improvement. Therefore, the City has no need to prove that the property is benefited.

2. While some property owners submitted and relied upon appraisal affidavits, unsworn appraisals, and appraisals that have occurred in the past, none of such appraisals overcome Macaulay's estimate of special benefits recognized by each parcel. None of the appraisers attended the hearing and were not subject to cross-examination by the city attorney, nor were they available to answer questions from or respond to the testimony presented by Macaulay. Furthermore, an example of expert testimony necessary to overcome an appraisal and an example of expert testimony that does not are found in the Court of Appeals decision in Kusky v City of Goldendale, 85 Wn. App. 493 (1997), and Time Oil Company v The City of Port Angeles, 42 Wn. App. 473 (1985). In Kusky the property owner's appraiser, one who specialized in the valuation of property contaminated by hazardous waste, appeared at the final assessment hearing and provided an expert opinion as to the value of a property with contaminated soil. He testified that such parcels are deeply discounted on the market, virtually impossible to mortgage or sell, and that the LID actually diminished the value of Kusky's parcel. The Court ruled that the appraiser's testimony constituted sufficient evidence that the property did not benefit from the LID. The Court also ruled that the appraiser's testimony shifted the burden of proof to the City to prove with competent evidence that the property was specially benefitted by a specific amount. However, the City did not do so but elected to rely on the presumption that its assessment was proper. In Time Oil the property owner produced one witness who appeared and testified at the hearing that:

> ..."It is my feeling that the seller will receive no additional benefit with regards to the sales price in the future from this LID on his property". When questioned by the city attorney, he stated that he used an income-based analysis to reach this opinion. He did not, however, produce any information

to support his position. 42 Wn. App. 473 @ 480

The Court noted that:

> Not only did the witness's opinions fall short of establishing before and after values...the foundation was inadequate. An expert opinion must be based on facts, not speculation or conjecture...The testimony of Time Oil's witness was altogether inadequate. 42 Wn. App. 473 @ 480

Again, in the present case, no appraiser appeared at the hearing and none of the written appraisals/appraiser statements established before and after LID values. Thus, the presumption of the validity Macaulay's before and after assessments was not overcome.

RECOMMENDATION:

The Edgewood City Council should reject all protests to the final assessment roll of LID #1. However, the City Council should adjust the assessments to the 1999 Stokes Family, LLC, parcel, the Edgewood Bible Church parcel, and the O'Ravez parcel as set forth in the Macaulay and Associates, LTD, letter to the city attorney dated June 13, 2011, and as set forth above. Furthermore, the City Council should confirm the zoning of LID parcel 130 owned by North Meridian Associates, et al.

RECOMMENDED this 30th day of June, 2011.

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

TRANSMITTED this 30th day of June, 2011, to the following:

OTHERS:

City of Edgewood
Attn: Janet Caviezels
2224-104th Avenue East
Edgewood, WA 98372

APPEAL

The process and time limits for appeal of the Examiner's recommendations are set forth in Section 4 Ordinance No. 11-0361 that is attached hereto.