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FILED
DEPT. 22
IN OPEN COURT

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Pierce County Clerk
By: *C. J. ...*
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

8 HASIT, LLC, a Washington limited liability
9 company,

Consolidated Case NO. 11-2-12496-2
(Consolidated with No. 11-2-12492-0 and
No. 11-2-12513-6)

10 Petitioner,

FINDINGS OF FACT, CONCLUSIONS OF
11 LAW AND DECISION ON APPEAL

12 CITY OF EDGEWOOD (LOCAL IMPROVEMENT
DISTRICT #1), a municipal corporation,

13 Respondent.

14 [No. 11-2-12492-0 - Hasit Appeal]

15 1999 STOKES FAMILY LLC, a Washington
16 limited liability company, and RAY REMPEL
17 and ELDEAN REMPEL, as Trustees for
18 REVOCABLE TRUST AGREEMENT OF RAY E.
19 REMPEL AND ELDEAN B. REMPEL DATED
20 DECEMBER 12, 2006, a Trust,

21 Consolidated Case Assigned To:
The Honorable John R. Hickman

22 Petitioners,

23 v.

24 CITY OF EDGEWOOD, a municipal corporation,

25 Respondent.

26 [No. 11-2-12496-2 - Stokes Appeal]

27 ERIC DOCKEN, DOCKEN PROPERTIES, LP,
28 ENID AND EDWARD DUNCAN, JAMES AND
29 PATRICIA SCHMIDT, DARLENE MASTERS, aka
30 THE BRICKHOUSE, LLC, GEORGE AND ARLYN
31 SKARICH, SUELO MARINA, LLC,

32 Petitioners,

33 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION - 1 of 10
(11-2-12496-2)

34 LAW OFFICES
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36 1201 PACIFIC AVENUE, SUITE 2100
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1 V.

2 CITY OF EDGEWOOD (LOCAL IMPROVEMENT
3 DISTRICT #1), a municipal corporation,

4 Respondent

5 {No. 11-2-12513-6 - Docken Appeal}

6 This consolidated appeal pursuant to chapter 35.44 RCW came on for hearing on
7 October 7, 2011, before the Honorable John Hickman. Petitioner Hasit LLC appeared by
8 and through its attorney Maygan Hurst. Petitioners 1999 Stokes Family LLC and Ray
9 Rempel and Eldean Rempel, as Trustees for the Revocable Trust Agreement of Ray E.
10 Rempel and Eldean B Rempel dated December 12, 2006, appeared by and through their
11 attorney Margaret Archer. Petitioners Eric Docken, Docken Properties, LP, Enid and
12 Edward Duncan, James and Patricia Schmidt, Darlene Masters, aka The Brickhouse, LLC,
13 George and Arlyn Skarich and Suelo Marina, LLC appeared through their attorney Carolyn
14 Lake. Respondent City of Edgewood appeared through its attorney Zachary Leli.

15 Pursuant to chapter 35.44, Petitioners all challenge the Assessment Roll adopted
16 by the Edgewood City Council on July 19, 2011 through Ordinance No. 11-0366. More
17 specifically, Petitioners seek to set aside or revise the dollar amount of the special
18 assessments levied against their properties pursuant to the City of Edgewood LID No. 1
19 for installation of sewers bordering or affecting their real property within the LID
20 boundary.

22 The Court reviewed the verbatim transcripts of the June 1, 2011 City of Edgewood
23 Local Improvement District No. 1, Final Assessment Roll Hearing before Hearing Examiner
24 Stephen K. Causseaux, Jr., the verbatim transcript of the July 19, 2011 Edgewood Special
25 City Council Meeting and the associated record, all of which was certified by the City of
26 Edgewood pursuant to RCW 35.44.230. The Court also considered the written briefs and

27)FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION - 2 of 10
28 (11-2-12496-2)

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1 oral arguments presented by the parties. Being fully advised in the premises, the Court
2 makes the following Findings of Fact and Conclusions of Law.
3

4 **FINDINGS OF FACT**

5 1. The issue of bringing a sewer system to the City of Edgewood ("City") has
6 been a long-standing subject of discussion within the community.

7 2. On October 14, 2008, the City formed local improvement district No. 1
8 ("LID") to install sewers in Edgewood, specifically along the Meridian Avenue 161
9 corridor.

10 3. LID financing was obtained by the City in 2009; construction of the sewer
11 improvement was completed by March 2010; and the City Council accepted the
12 completed sewer improvement on April 12, 2011.

13 5. The City retained the appraisal firm Macaulay and Associates ("Macaulay")
14 to assess the value of those parcels within the LID that would receive a "special benefit"
15 by having a sewer near the parcels. There were approximately 161 parcels that were
16 deemed to have this "special benefit."

17 6. The purpose of assessing these parcels for their "special benefit" was to
18 pass on the sewer costs to these 161 parcels based on the increase in value of the real
19 estate as a result of the sewer improvement. The amount needed to pay for the sewer
20 improvement was in excess of \$21 million.

21 7. The special benefit is measured by the increase in value of the parcel
22 immediately before and immediately after the improvement.

1 8. A major factor in Macaulay's appraisal process and its ultimate valuation of
2 the LID properties were the zoning changes that were effective May 9, 2011. The overall
3 rezoning allowed for greater use of the affected properties and for higher density.

4 9. Macaulay used a "mass appraisal" formula to value the LID properties.
5 The LID parcels were not individually appraised, but Macaulay did attempt to look at
6 individual parcels and their value within certain zoning code areas.

7 10. Petitioners argue that the method and formula used by Macaulay in
8 calculating the special benefits to the LID parcels was either flawed or not applied on a
9 consistent basis.

10 11. The owners of property within the LID were mailed notices on May 12,
11 2011 that contained various materials regarding their assessments and notice of a
12 hearing date before the Hearing Examiner set for June 1, 2011. The hearing notice was
13 for the purpose of contesting property owner assessments as well as explaining the
14 procedure and protocol for presenting an objection at the hearing.

15 12. The Hearing Examiner was acting as a Board of Equalization in holding this
16 hearing.

17 13. Petitioners allege that the hearing notice was flawed, the time allowed was
18 not sufficient and that the complete appraisal report was not provided. Petitioners also
19 argue that the notices provided by the City were not clear in advance as to what evidence
20 would or would not be allowed at the hearing.

21 14. All the named Petitioners filed objections and actively participated in
22 contesting their respective parcel assessments.

1 15. The final report by the Hearing Examiner denied for the most part
2 Petitioners' request for a change in their respective "special benefit" assessment.

3 16. The Hearing Examiner's written decision led to additional substantive and
4 procedural issues that have been raised by the Petitioners. These issues, by way of
5 summary, include whether the following actions by the Examiner contravened applicable
6 law:

7 a. limiting expert appraisal evidence to the "special benefit" valuation;
8 b. requiring (without disclosure) that experts be present and subject to
9 cross-examination for their testimony to be considered;

10 c. refusal to consider Petitioners' comments as to the appraisal report
11 without certain parameters being met;

12 d. inappropriate use of a burden of proof that put the sole burden on
13 the property owners;

14 e. application of a different evidentiary standard than was set forth in
15 the hearing notice; and

16 f. application of a burden of proof imposed on the property owners
17 that could not reasonably be prepared for within 15 days prior to the hearing, specifically
18 the requirement that the property owners' experts had to be present at the hearing and
19 subject to cross-examination in order for their testimony to be considered.

20 17. Petitioners timely filed appeals of the Hearing Examiner's ruling to the City
21 Council. The appeal hearing before the City Council was held on July 19, 2011.
22 Petitioners were each granted three (3) minutes for oral argument in front of the City
23 Council.

1 18. With few exceptions, the Hearing Examiner's recommendations were
2 followed and adopted by the City Council at the July 19, 2011 appeal hearing. Petitioners
3 allege that there was little or no discussion as to the merits of any of the appeals.

4 19. By way of summary, the City has filed the following responses to the
5 Petitioner's allegations and claims:

6 a. The subject of sewers in the City has been a subject of discussion
7 for many years and was not a surprise to Petitioners;

8 b. The adoption of the LID Assessment Roll was completed after full
9 and fair notice to all property owners and was completed under the original estimate
10 costs;

11 c. Macaulay was well qualified for calculating the special benefits and
12 assessments for the LID properties;

13 d. The mass appraisal approach used by Macaulay incorporated
14 individual adjustments made for parcels using the more traditional comparable-sales
15 approach;

16 e. Copies of Macaulay's report and backup materials were available on
17 May 10, 2011 prior to the hearing before the Hearing Examiner;

18 f. The hearing before the Hearing Examiner was fairly publicized and
19 adequate time was provided to each property owner to present their case; and

20 g. The City Council hearing on July 19, 2011 was free of any
21 irregularities and violated no city or state law.

22 20. The first issue this Court must consider before addressing the merits of
23 Petitioners' appeal of the special benefit amount assessed against their property is

1 whether property owners were accorded a fair hearing opportunity and notice in regard to
2 the City Hearing Examiner's initial meeting.

3 21. Property owners were not given advance notice that the Hearing Examiner
4 would presume Macaulay's report to be valid and only certain evidence would be
5 considered in disputing that appraiser's report.

6 22. Property owners were ~~given~~ ^{not given} advance notice that evidence challenging
7 their assessments would not be considered without a supporting expert present at the
8 hearing to give live testimony.

9 23. The Hearing Examiner treated the presumptions in favor of the City as
10 conclusive.

11 CONCLUSIONS OF LAW

12 1. The Court's first issue of law was whether the City's notice and advisement
13 of the hearing set for June 1, 2011 was so inadequate as to violate the appellants' right
14 to a fair hearing. The short answer is yes.

15 2. Property owners were not fairly informed that the Hearing Examiner would
16 presume Macaulay's report to be valid and only certain evidence would be considered in
17 disputing that appraiser's report, specifically that evidence challenging the assessments
18 would not be considered without a supporting expert present at the hearing to give live
19 testimony.

20 3. The Hearing Examiner improperly treated the presumptions in favor of the
21 City as conclusive, when in fact they were subject to being rebutted.

22 4. Fifteen days ^{may be adequate notice under the statute, but it is insufficient}
23 ^{given that the City required property owners} notice for a taxpayer to hire an independent appraiser and complete a report evaluating a

1 parcel's value with and without the sewer being added as a value-added item. This
2 violated Petitioners' right to a fair hearing.

3 5. The Hearing Examiner did not act as a neutral fact-finder when he
4 presumed that Macaulay's report was valid rather than a preliminary report as required
5 under RCW 35.44.060.

6 6. The Hearing Examiner must consider evidence of an inconsistent
7 application of the Macaulay's protocol even if that evidence is without the support of an
8 expert opinion.

10 7. Three minutes per property owner for oral argument before the City Council
11 on appeal was inadequate and, on its face, unfair in light of the dollar amounts that were
12 being assessed.

13 ORDER *myl msl* (1) JZC

14 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that

15 1. This matter is remanded for a revised and de novo hearing and evidentiary
16 process before the Hearing Examiner. The hearing and evidentiary process is limited to
17 the named Petitioners herein and will not involve the other landowners within the LID who
18 did not timely appeal to this Court.

19 2. The Court's jurisdiction extends only over those ^{who} appealed their
20 assessments to this Court. *myl msl* (1) JZC

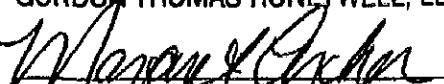
21 3. All evidence relevant to the validity of Macaulay's report shall be
22 considered, including evidence of its inconsistent application.

23 4. Oral testimony may be presented, as well as written reports, and no
24 competent evidence shall automatically be dismissed.

1

2 Approved for entry:

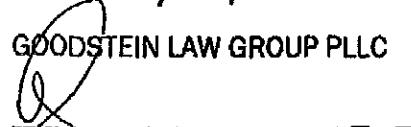
3 GORDON THOMAS HONEYWELL, LLP

4 
5 Margaret Archer, WSBA # 21224

6 Attorneys for Petitioners in Stokes Appeal

7 Date: 11/10/2011

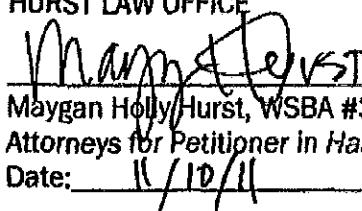
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10 Carolyn A. Lake, WSBA #13980

11 Attorneys for Petitioners in Docken Appeal

12 Date: 11/10/2011

13 HURST LAW OFFICE

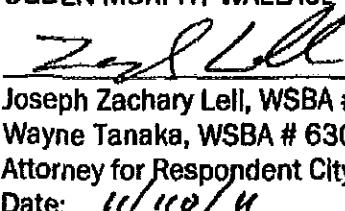
14 
15 Maygan Holly Hurst, WSBA #37098

16 Attorneys for Petitioner in Hasit Appeal

17 Date: 11/10/11

18 APPROVED AS TO FORM ONLY; NOTICE OF PRESENTATION WAIVED

19 OGDEN MURPHY WALLACE PLLC

20 
21 Joseph Zachary Lell, WSBA # 28744

22 Wayne Tanaka, WSBA # 6303

23 Attorney for Respondent City of Edgewood

24 Date: 11/10/1125 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION - 10 of 10
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