



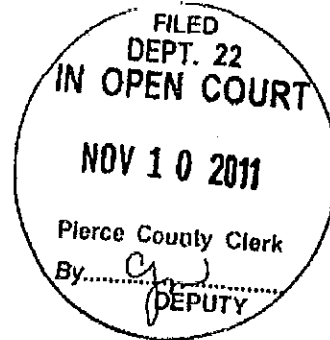
RECEIVED

DEC 01 2011

City of Edgewood

Filed with the City Clerks office on 12/1/11.

Benj. M. ... Acting City Clerk



SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

HASIT, LLC, a Washington limited liability company,

Petitioner,

v.

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

Respondent.

(No. 11-2-12492-0 - Hasit Appeal)

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

Petitioners,

v.

CITY OF EDGEWOOD, a municipal corporation,

Respondent.

(NO. 11-2-12496-2 - Stokes Appeal)

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

Petitioners,

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON APPEAL

Consolidated Case Assigned To: The Honorable John R. Hickman

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 Lell.

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.

21
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

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 **FINDINGS OF FACT**

4
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
14 5. The City retained the appraisal firm Macaulay and Associates ("Macaulay")
15 to assess the value of those parcels within the LID that would receive a "special benefit"
16 by having a sewer near the parcels. There were approximately 161 parcels that were
17 deemed to have this "special benefit."

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

22
23 7. The special benefit is measured by the increase in value of the parcel
24 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
- 8 a. limiting expert appraisal evidence to the "special benefit" valuation;
 - 9 b. requiring (without disclosure) that experts be present and subject to
10 cross-examination for their testimony to be considered;
 - 11 c. refusal to consider Petitioners' comments as to the appraisal report
12 without certain parameters being met;
 - 13 d. inappropriate use of a burden of proof that put the sole burden on
14 the property owners;
 - 15 e. application of a different evidentiary standard than was set forth in
16 the hearing notice; and
 - 17 f. application of a burden of proof imposed on the property owners
18 that could not reasonably be prepared for within 15 days prior to the hearing, specifically
19 the requirement that the property owners' experts had to be present at the hearing and
20 subject to cross-examination in order for their testimony to be considered.
21

22 17. Petitioners timely filed appeals of the Hearing Examiner's ruling to the City
23 Council. The appeal hearing before the City Council was held on July 19, 2011.
24 Petitioners were each granted three (3) minutes for oral argument in front of the City
25 Council.
26

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
24

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

*mya mlt JLL
for the June 1
2011 Hearing
This*

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.

*(AS) JLL
JMA*

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.

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

JMA

12
13 ORDER

mya mlt (AS) JLL

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.

*who mya mlt (AS) JLL
A*

19 2. The Court's jurisdiction extends only over those
20 assessments to this Court.

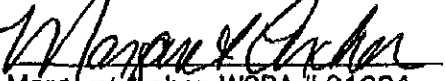
21 3. All evidence relevant to the validity of Macaulay's report shall be
22 considered, including evidence of its inconsistent application.

23 4. Oral testimony may be presented, as well as written reports, and no
24 competent evidence shall automatically be dismissed.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Approved for entry:

GORDON THOMAS HONEYWELL, LLP



Margaret Archer, WSBA # 21224

Attorneys for Petitioners in Stokes Appeal

Date: 11/10/2011

GOODSTEIN LAW GROUP PLLC



Carolyn A. Lake, WSBA #13980

Attorneys for Petitioners in Docken Appeal

Date: 11/10/2011

HURST LAW OFFICE



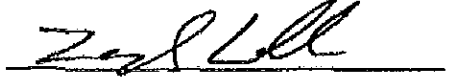
Maygan Holly Hurst, WSBA #37098

Attorneys for Petitioner in Hasit Appeal

Date: 11/10/11

APPROVED AS TO FORM ONLY; NOTICE OF PRESENTATION WAIVED

OGDEN MURPHY WALLACE PLLC



Joseph Zachary Lell, WSBA # 28744

Wayne Tanaka, WSBA # 6303

Attorney for Respondent City of Edgewood

Date: 11/10/11