recording from "Rick." The instructions given to both Mr. Fury and Mr. Fleming were very clear – that their post-hearing submittals were to be limited to specific items raised at the reassessment hearing, and no new evidence or information beyond the scope of what they covered at the reassessment hearing would be permitted, because it would not be fair. *(Hearing Recording, at or about 2:40, a portion of which is transcribed in the City's June 5th Response to Mr. Fleming's Supplemental Response submitted on June 1st).*

39. On or about April 2nd, an attorney, Allen Carlson, submitted a written request for a 20-day continuance to submit materials on behalf of Mr. Fleming. *(Ex. 27).* On April 20th, the City's attorneys submitted a response to Mr. Carlson's request, explaining that the City did not object to allowing Mr. Fleming an additional 20 days to evaluate his reassessment, provided the City would be granted an opportunity to respond to any materials offered by Mr. Carlson, on Mr. Fleming's behalf. *(Ex. 33).*

40. Regrettably, due to technical communication problems, the Examiner did not receive complete copies of certain materials, Christopher Allen's initial request for additional time to respond on behalf of his client, Mr. Fleming, Ex. 27, though the Examiner did receive a copy of the City's pleading explaining it did not object to Mr. Fleming's requested 20-day continuance to review the assessment, Ex. 33. Shortly after 20 days passed, the Examiner inquired if anything had been received, and staff contacted Mr. Allen. The Clerk informed the Examiner that Mr. Allen had been waiting to hear back before submitting anything, but that he could do so by the end of the week in question. The examiner directed staff to contact Mr. Allen and advise him that he should promptly file his written response for Mr. Fleming, under the assumption that the city's counsel was apprised of the situation. Mr. Allen finally submitted additional material on behalf of Mr. Fleming on or about June 1st. The City promptly responded via a pleading dated June 5th, objecting to the timeliness of Mr. Allen's response – understandably so, because the undersigned failed to issue a clarification order explaining the situation. By written Order issued via email from the City Clerk on June 11th to counsel, the Examiner granted the City's request for additional time to respond to Mr. Allen. The City complied with the short order and submitted its written response to Mr. Allen's materials by June 20th. Following such response, the Record for this matter was deemed closed.

41. In any event, Mr. Fleming has been afforded a full and fair opportunity – with ample time – to submit post-hearing materials to challenge the accuracy or validity of any proposed reassessment regarding his property, and the City was given a full and fair opportunity to respond. In the end, Mr. Fleming failed to offer any competent or persuasive evidence or information that would credibly challenge the validity of the City's special benefit calculations or the amount of special benefit assessments determined by the City's appraiser, Mr. Macaulay – even though a review of the reassessment was Mr. Fleming's sole stated reason for seeking an additional 20 days to respond, according to Mr. Allen's April 2nd letter.

42. Nothing from Mr. Fleming or his attorney, Mr. Allen, serves as a legitimate basis to modify Mr. Fleming's proposed reassessment.

43. The Examiner finds that Mr. Fleming's protests are more appropriately addressed with his seller, and should not serve as a basis to shift the costs of an undisputed ULID special benefit that enhanced the value of his new properties onto the taxpayers of the City of North Bend who received no special benefit from such public expenditures.

44. Essentially, Mr. Fleming implies that the seller, Mr. Weber, did not disclose the pending ULID reassessment, or the fact that it could occur, and that he had no possible way to discover such possibility, even though Weber was a named party in the King County lawsuit that explicitly confirmed the City's authority to reassess his property. *(See caption naming Plaintiffs/Appellants in King County Superior Court Case No. 15-2-02756-5 SEA, including TOM WEBER, an individual, included in the record as part of Ex. 21, marked as Ex. 1 thereto).*

45. On the specifics of Mr. Fleming's written objection, *Ex. 23*, the Examiner finds that the voicemail transcript submitted by Mr. Allen as part of his post-hearing submittals does not support Mr. Fleming's and Mr. Wolter's allegations made at the hearing and in the written statement that they were told that there were "no pending assessments" that might apply to Fleming's property.

46. Mr. Fleming's arguments question the fairness of the pending assessment, again primarily based on the allegation that the seller failed to disclose the existence of the ULID, and that some man named "Rick" did not tell him that a reassessment could occur, meaning the potential assessment was not a factor in his purchase negotiations. Mr. Fleming did not offer any expert testimony or other competent evidence to question the accuracy of the estimated special benefit conferred on his parcels, as explained in the Restricted Appraisal Report for his properties, *Exhibit 14.*

47. The Examiner finds and concludes that there is ample evidence in the Record, and in the public domain, regarding the existence of the ULID at issue, the litigation involving the matter, the possibility that a reassessment could occur, and the public meeting minutes, resolutions and ordinances of the North Bend City Council, that could have easily been discovered by a reasonable person undertaking a feasibility study or other analysis regarding a large piece of commercial property, like that purchased and now owned by Mr. Fleming. Accordingly, Mr. Fleming's fairness arguments, including his untimely equitable estoppel claims, all must fail. The Examiner adopts the analysis and arguments included in the City's Responses to Mr. Fleming's Response, as a further basis to deny the relief requested by Mr. Fleming.

48. Nothing in the Record supports or justifies Mr. Fleming's request to nullify his reassessment because he did not receive a personal notice of the hearing. The City

complied with all state notice requirements, directing the notice to the property owner of record based on King County tax records. As shown above, the City's notice regarding the reassessment hearing went so far as to ask *"If you are no longer the taxpayer of record/owner, please inform the City as soon as possible by contacting Susie Oppedal [the City Clerk, with her number and email provided on each notice form]*. The City should not be penalized because the previous owner, whose name still appeared as the owner of record on King County tax records as late as April of 2018, Mr. Weber, failed to contact the City Clerk to redirect a personal notice of the hearing to Mr. Fleming.

49. Post-hearing briefing from the City confirm that King County tax records were not updated as late as April of 2018, so Mr. Fleming still did not appear as the owner of record at that time. But, it is obvious that Mr. Fleming did in fact receive some sort of notice of the reassessment hearing, because he personally appeared and participated in the hearing, along with his real estate broker, colleague, and hearing representative – Mr. Wolter.

50. Mr. Fleming was not prejudiced by any notice issue, especially given the extra time he was provided to submit materials supporting his position in the post-hearing process.

Arguments about reassessment costs.

51. In their written objections, both Mr. Eddings and Mr. Fury generally questioned the City's ability to recover legal and other costs incurred by the City as part of this ULID reassessment. Mr. Fleming did not raise the issue in a timely manner in writing before the time of the hearing, so his post-hearing arguments made on the subject are untimely and must be rejected on that basis alone. Even if all of the general arguments opposing the City's ability to recover administrative costs, including legal fees, are placed under the microscope for consideration in this process, they all fail because they ignore clear direction and authority found in long-standing state LID statutes that address the issue.

52. The Examiner finds and concludes that the express language of RCW 35.44.020(7) specifically authorizes recovery of legal, appraisal, and other administrative costs incurred by a city "for" and "in connection with" a ULID such as this. The statute reads in relevant part as follows:

> **RCW 35.44.020 Assessment district—Cost items to be included.**
> There shall be included in the cost and expense of every local improvement for assessment against the property in the district created to pay the same, or any part thereof:
> (1) The cost of all of the construction or improvement authorized for the district including, but not limited to, that portion of the improvement within the street intersections;
> (2) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the city or town engineer;
> (3) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;
> (4) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;
> (5) The estimated cost and expense of accounting, clerical labor, and of books and blanks extended or

> used on the part of the city or town clerk and city or town treasurer in connection with the improvement;
> (6) All cost of the acquisition of rights-of-way, property, easements, or other facilities or rights, including without limitation rights to use property, facilities, or other improvements appurtenant, related to, and/or useful in connection with the local improvement, whether by eminent domain, purchase, gift, payment of connection charges, capacity charges, or other similar charges or in any other manner;
> (7) The cost for legal, financial, and appraisal services and any other expenses incurred by the city, town, or public corporation for the district or in the formation thereof, or by the city, town, or public corporation in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds. (Emphasis added).

53. None of the objecting parties presented sufficient evidence, compelling arguments, or controlling legal authority that would serve as a basis to eliminate, modify or reduce reassessment costs that are to be distributed among all 17 affected parcels on a fair and equitable basis.

54. No one presented any evidence or objective basis for determining that one parcel or group of parcels caused or should be charged a greater share of the City's appraisal, legal, noticing, or other costs than any other parcel or group of parcels.

55. Accordingly, the Examiner finds and concludes that the City is fully permitted and authorized to include its reassessment costs in the reassessment applied to the properties at issue, pursuant to applicable law, including without limitation RCW 35.44.047 and 35.44.020.

General findings, discussion.

56. Division II of the Washington Court of Appeals has observed that, when considering an assessment roll, a city council or hearing officer: a) sits "as a board of equalization," citing RCW 35.44.080(2); b) "will consider the objections made and will correct, revise, raise, lower, change, or modify the roll or any part thereof or set aside the roll," citing RCW 35.44.080(3); and c) that a board of equalization presumes the value used by the county assessor to be correct, unless overcome by clear, cogent, and convincing evidence, citing WAC 458-14-046(4). *Hasit, LLC v. City of Edgewood,* 179 Wn. App. 917, 320 P.3d 163 (2014, Div. II). The same court observed that, "[s]ince a council or hearings officer considering an assessment roll sits as a board of equalization, these provisions disclose legislative intent that it make de novo determinations while presuming the assessments to be correct, constrained perhaps by the clear, cogent, and convincing standard." *Id.*

57. Except for the limited item involving a portion of property now owned by Mr. Fury as explained in more detail in other portions of this Recommendation, no one presented any competent, clear, cogent or convincing evidence at the reassessment hearing to credibly

challenge or rebut the Estimated Special Benefit figures for any parcel as listed in Mr. Macaulay's summary letter (Exhibit 9) or in other parts of the Record. Having failed to meet the relatively low standard of proof suggested by the *Hasit* decision, the Record is certainly void of any expert or other professional testimony or reports from any of the objecting parties that would credibly challenge or rebut the special benefit figures or reassessment costs allocated to any particular property, which might otherwise be required if a reviewing body or court applies a higher level of proof to support any of the objecting parties' challenges to the reassessment roll. *(See Bellevue Associates v. City of Bellevue,* 108 Wash.2d 671 at 676–77, 741 P.2d 993 (1987); *Abbenhaus v. City of Yakima,* 89 Wash.2d 855 at 860–61, 576 P.2d 888 (1978); *Hamilton Corner I, LLC v. City of Napavine,* 200 Wn. App. 258, 402 P.3d 368 (Div. II, 2017); *Hansen v. Local Imp. Dist. No. 335,* 54 Wn. App. 257, 263, 773 P.2d 436, 440 (1989)).

58. The Examiner made several site visits to the reassessment area, specifically including publicly viewable parcels addressed in written objections at issue in this Recommendation. Over the last several years, the Examiner has had extensive experience processing numerous Preliminary Plat applications for development projects throughout the City of North Bend, especially properties specially-benefited by the ULID at issue herein. There is no credible dispute that the ULID has generated substantial special benefits for properties served by the new sewer improvements.

59. The Examiner finds that the City's appraiser, Robert J. Macaulay, MAI, of Valbridge Property Advisors, Real Estate Appraisers & Consultants, responsible for preparing the appraisal reports used to prepare the reassessment roll, is well qualified as an expert on the subjects and topics addressed in all of the appraisal reports and other supporting exhibits from his office that are included in the Record. *(See, without limitation, Exhibits 9 – 16, and 32).* His qualifications and relevant experience, as well as that of his firm, are summarized in Exhibit No. 8. No evidence was presented in any form to credibly challenge his qualifications or recommended valuations and corresponding special benefit assessments.

60. Any Conclusion or statement of fact included in any other section of this Recommendation that is deemed to be a finding of fact is hereby incorporated by reference as such.

V. CONCLUSIONS OF LAW.

1. All procedures required prior to confirmation of the final reassessment roll by RCW Chapters 35.43 and 35.44, the North Bend Municipal Code and the Ordinances and Resolutions of the City relating to ULID No. 6 have been followed.

2. All property in the reassessment area is specially benefitted by the sewer system project funded by ULID No. 6 in an amount at least equal to the reassessment contained in the final reassessment roll, or as modified in this Recommendation.

3. The assessments in the reassessment roll are imposed on each property equitably and in reasonable proportion to all other property in the affected area.

4. The City is fully authorized and justified in including reassessment costs incurred as a part of this reassessment process. *(See RCW 35.44.020(7); and other legal authority referenced in the City's Brief in Support of Reassessment Costs, Ex. 35)*.

5. For all parcels for which no protest or objection to the reassessment roll was received within the time specified in the notices provided to the property owners and the public, any and all objections to the final reassessment roll as it applies to such parcels are deemed waived. *See RCW 35.44.110.*

6. Except for the portion of Mr. Fury's property addressed below, all of the written protests and objections to this ULID No. 6 Reassessment Roll should be denied.

7. The reassessment roll should be confirmed as modified in this Recommendation.

8. Any Finding of Fact or other provision of this Recommendation that may be deemed a Conclusion of Law is incorporated in this section as such.

VI. RECOMMENDATION.

Based on the record, and for the reasons set forth above, the undersigned Hearing Examiner makes the following Recommendations to the North Bend City Council:

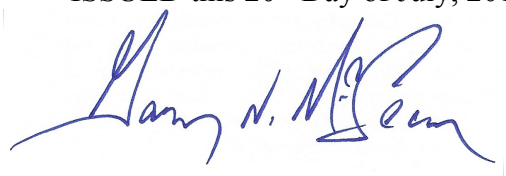
A. Except for the portion of Mr. Fury's property addressed below, all of the written protests and objections to this ULID No. 6 Reassessment Roll should be denied;

B. The special benefit calculation for ULID Map No. 17.2 (TPN 102308-9728), currently owned by Mr. Fury, should be reduced by $43,892.08. No more. This figure is derived by reducing the size of ULID Map No. 17.2 by the amount of land-area that appears to have been included as part of the original assessment and appears to have been transferred from the Iccolucci's to Mr. Fury, 75,676 square feet, and reducing the reassessment value by a corresponding amount, understanding that Mr. Macaulay's appraisal report for the parcel in question resulted in a 58-cents per-square-foot value for the parcel. [75,676 x $.58 = $43,892.08]. *(See Ex. 28; Ex. 15; and Ex. 32)*;

C. As requested by the City, Reassessment Costs, including appraisal costs, legal costs, hearing examiner costs, and the costs to provide statutorily required notices, all updated to include all costs incurred up to the date on which the City Council takes final action regarding this Recommendation, and as verified by the City Clerk and Finance Director, should be included as part of this Reassessment, charged evenly to each of the 17 parcels. For example: "Final Reassessment Costs" divided by 17 parcels in the ULID = $Reassessment Costs allocated to each parcel; and

D. All other reassessments set forth on the proposed Reassessment Roll should be confirmed by the City Council.

ISSUED this 20th Day of July, 2018



Gary N. McLean
Hearing Examiner

Appeal to City Council

Under NBMC 2.20.140, captioned "Appeals from hearing examiner's findings or recommendations on assessment rolls," an appeal to the City Council may be filed only by a party who timely submitted a written objection to the assessment roll at or prior to the assessment roll hearing. The notice of appeal shall state clearly (1) the number of the local improvement district, (2) the appellant's name and address and of the appellant's attorney or other agent, if any, (3) the recommendation being appealed, (4) the error of fact, law, or procedure alleged to have been made by the hearing examiner and the effect of the alleged error on the recommendation, and (5) the redress sought by the appellant. The notice of appeal shall be filed with the city clerk, together with a fee of $250.00, no later than the fourteenth day after the day upon which the report of the hearing examiner is mailed by the city clerk.