



FOSTER PEPPER PLLC

Local Improvement Districts – Overview And The Basics

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P. Stephen DiJulio
206.447.8971 | dijup@foster.com

The Basics

Special assessments to pay for local public improvements benefiting specific land are of ancient lineage. . . . All such assessments have one common element: they are for the construction of local improvements that are appurtenant to specific land and bring a benefit substantially more intense than is yielded to the rest of the municipality. The benefit to the land must be actual, physical and material and not merely speculative or conjectural.

Heavens v. King County Rural Library Dist.,
66 Wn.2d 558, 563, 404 P.2d 453 (1965).



In re Aurora Avenue, 180 Wash 523, 41 P.2d 143 (1935).



LIDs are Only Financing Tools

- The most important point to realize about LIDs is that the entire LID process is about financing infrastructure improvements, not constructing them.
- LID processes lead, ultimately, to the sale of bonds to investors and the retirement of those bonds via annual assessments on the property owners within a district.



Special Assessments are not “taxes” and not subject to uniformity requirements of Wash. Const., Art. VII, §9. Local governments may levy assessments for local improvements according to special benefits, which will vary from one tract or lot to another.

See Berglund v. Tacoma, 70 Wn.2d 475, 477, 433 P.2d 922 (1967)
(also discussing LID Guarantee Fund).

Laws recognize a distinction between public improvements which benefit the entire community, and those local in their nature which benefit particular real property or limited areas. The property benefited is usually required to pay the expense of the latter. A local improvement is a public improvement which, although it may incidentally benefit the public at large, is made primarily for the accommodation and convenience of the inhabitants of a particular locality, and which is of such a nature as to confer a special benefit upon the real property adjoining or near the improvement.

On the other hand, if its primary purpose and effect are to benefit the public, it is not a local improvement, although it may incidentally benefit property in a particular locality. Whether an improvement is local is a question of fact rather than one of law, to be determined from its nature and object.

City of Seattle v. Rogers Clothing for Men, Inc., 114 Wn.2d at 226, quoting 14 *E. McQuillin, the Law of Municipal Corporations* § 38.15 [current, 3d ed. 2008].

In the proper case, even aesthetic improvements can provide a valid benefit for special assessment purposes.

City of Seattle v. Rogers Clothing for Men, Inc.,
114 Wn.2d 213, 224, 787 P.2d 39 (1990).



Due Process

Londoner v. City and County of Denver,
210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103 (1908).

For decades, strict compliance with the LID appeal statutes was required to invoke the jurisdiction of the Superior Court. See *Goetter v. City of Colville*, 82 Wash. 305, 144 P. 30 (1914). However, the case of *Fisher Bros. Corp. v. Des Moines Sewer Dist.*, 97 Wn.2d 227, 643 P.2d 436 (1982), softened this rule. In the absence of substantial compliance with the LID appeal statutes, courts will continue to dismiss appeals where substantial compliance with statutory requirements are not met.

Patchell v. City of Puyallup, 37 Wn. App. 434, 443, 682 P.2d 913 (1984), review denied, 102 Wn.2d 1015 (1984).

Tiffany was required to use the prescribed statutory procedure for challenging the assessment and it failed to do so. Accordingly, the assessment is conclusively correct and “cannot in any manner be contested or questioned in any proceeding by any person.” RCW 35.44.190. Thus, the superior court properly determined that it did not have jurisdiction to determine whether the assessment was correct. Under RCW 35.44.190, the assessment stands as a proper measure of the special benefits received.

Tiffany Family Trust Corp. v. City of Kent,
155 Wn.2d 225, 238, 119 P.3d 325 (2005).

Nowhere in the LID statutes will you find information on technical feasibility, design, cost estimates, construction management expertise and project closeout requirements. Good contract management skills are necessary, just as for any other project not financed by an LID.

City of Kent



An acceptable and an increasingly frequent practice is for final assessments to be set by the local government before construction actually begins.

Little Deli Mart v. City of Kent, 108 Wn. App. 1, 32 P.3d 386 (2001),
review denied, 145 Wn.2d 1030 (2002).

LID Assessment Methods

- Statutes describe one or two specific methods of assessing benefited properties, but also allow the municipality to choose any other method which meets the basic criteria.
- Two main assessment methods –
 - mathematical
 - special benefit analysis
- mathematical - relatively inexpensive, easier to explain to property owners
 - front-foot (per lineal foot of property street frontage)
 - area (per square foot of property)
 - zone and termini - described in RCW 35.44.030 and .040
 - unit (per lot or parcel)
- it is possible to use different types of mathematical assessment within one district.

LID Assessment Methods

- special benefit analysis – generally the safest, but relatively expensive
 - certified appraiser calculates the value of each parcel with and without the infrastructure improvement project.
 - the difference between those two values is the special benefit.
 - the portion of project costs assignable to the LID is then divided by the total of all special benefits.
 - this ratio is then applied to the special benefit of each parcel to determine the assessment for each parcel.
- Even if a LID lends itself very well to a mathematical method of assessment (i.e., uniform lots, similar zoning) or is not large enough to warrant a full-blown special benefit analysis, it is wise to check a few strategic parcels with a limited appraisal. This will prevent unpleasant surprises at the final assessment roll hearing.

LID Assessments are Subject to Strict Criteria

- Statutes specify that the assessment per parcel must not exceed the special benefit of the improvement to that parcel, which is defined as the difference between the fair market value of the property before and after the local improvement project.
- In addition, the assessments must be proportionate to one another.
- A corollary to these principles is that property not benefited by the improvements may not be assessed.
- No matter what assessment method is used - per parcel, front foot, area, zone termini, traffic volumes, special benefit appraisal, etc. - the courts will be concerned only with these criteria.

John Danz Theater



From the Collections of Eastside Heritage Center

A continuous local improvement project may not be divided into units in order to assess certain costs against the units for which those costs were incurred. Rather, the assessment formula must be reasonably based upon the special benefits derived from the entire improvement project in relation to all the other property within the LID.

Sterling Realty Co. v. City of Bellevue,
68 Wn.2d 760, 766, 415 P.2d 627 (1966).

However, if an LID involves separate and distinct improvements (e.g., a street improvement project provides new sewer service to only certain lots), each such improvement must specially benefit the subject property before that property is assessed for that improvement.

Bellevue Assocs. v. City of Bellevue,
108 Wn.2d 671, 741 P.2d 993 (1987).

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- Property not benefited may not be assessed
 - Special assessments cannot substantially exceed the amount of special benefits

In re Schmitz, 44 Wn.2d 429, 433, 268 P.2d 436 (1954).

An expert's opinion on the market value of real estate must be based upon those legal principles which define the factors the expert can or cannot consider in reaching his or her expert opinion.

Doolittle v. City of Everett, 114 Wn.2d 88, 104, 786 P.2d 253 (1990).

Once a property owner produces competent expert testimony sufficient to rebut the presumptions in favor of the municipality, the burden shifts back to the municipality to introduce competent evidence of benefit. *Id.* If it fails to do so, its assessment will and should be nullified.

Bellevue Plaza, Inc. v. City of Bellevue,
121 Wn.2d 397, 418, 851 P.2d 662 (1993).

If expert testimony on the issue of special benefits is produced by the property owner, the presumptions in favor of a municipality disappear. “Presumptions are the `bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.’”

In re Indian Trail Trunk Sewer Sys., 35 Wn. App. 840, 843, 670 P.2d 675 (1983), review denied, 100 Wn.2d 1037 (1984); quoting *Mackowik v. Kansas City, St. J & C.B. R.R. Co.*, 94 S.W. 256, 262 (Mo. 1906).

The burden is upon the objecting property owner to prove the contrary. The law presumes that:

[A]n improvement is a benefit; that an assessment is no greater than the benefit; that an assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.

Abbenhaus v. City of Yakima,
89 Wn.2d 855, 861, 576 P.2d 888 (1978).

LIDs Don't Have to Create Hardships

- No councilperson wants to vote for a project that will put someone out of their home. Assessment deferrals are referenced in the statutes:
 - Chapter 84.38 RCW provides for assessments to be deferred indefinitely for qualified senior citizens.
 - RCW 35.43.250 and 35.54.100 provide for a deferral of up to four years for economically disadvantaged property owners, as defined in the formation ordinance.

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- Chapters 84.33 and 84.34 RCW defer assessments for qualified farm as lands and timber lands (but not “open space”).
 - In these cases, the deferred assessment does not go away, but becomes a lien against the property.

Public Relations!

- As an LID financed project tests an agency's public relations skills like no other, a public relations plan for each project is needed.
- These plans will be more effective if drafted in relation to overall city public relations policies, including those for media relations, conduct of meetings, parliamentary procedure and customer service.
- Public relations plans for an individual project need not be elaborate, but should recognize its unique scope and potential impacts. The plan should be detailed enough to include those steps necessary for notification of property owners, public hearings, review and approval by other city or local agencies as well as the mayor and council.

Before You Start an LID

- LID Administrator
- Checklists
- Flowcharts
- Proposed LID Worksheet
 - Developer Mitigation, Annexation or Concomitant Agreements
- Public Relations Plan
- Government Properties
- Exempt Properties
- Pre-formation Costs

How Are LIDs Formed?

- Two distinct methods of forming LIDs:
 - resolution of intention method which allows the legislative body of a municipality to initiate an LID
 - petition method which allows property owners to petition to initiate an LID.
- City becomes aware that a capital improvement project is desired through its capital improvement program, letters, petitions, telephone conversations, public testimony, regulatory requirements, etc.
- City evaluates the potential project, including need, estimated costs and possible additional funding sources (grants, loans, impact fees, etc.)

How Is an LID Formed by the Petition Method?

- The petition method permits property owners to initiate the formation of an LID. The steps are essentially the same, except that instead of a resolution of intention, a formal petition executed by a majority of the property owners in the proposed assessment district, is submitted to the legislative body.
- The legislative body then establishes a date for a public hearing.
- Subsequent procedures are the same as for the resolution process.

How Are LIDs Formed?

- General procedures to form an LID (resolution method):
 - determine the extent of property owner support through a postcard survey, informal meetings or informal petition.
 - if sufficient support exists, hold more informal meetings to present the extent of the project, estimated costs, and estimated total assessments.
 - prepare an environmental checklist.
 - identify environmental, technical, political and financial fatal flaws.
 - prepare preliminary assessment map and assessment roll.

How Are LIDs Formed?

- prepare a resolution declaring the intention of the legislative body to order the improvement, and setting a date for a formation hearing of the proposed LID.
- mail notice at least 15 days prior to the date fixed for the hearing to all benefited (or assessed) property owners. (3-4 weeks is normally provided.)
- publish resolution for two consecutive weeks in the official newspaper, with the first publication at least 15 days prior to the hearing date.
- prepare an ordinance forming the LID for review by the city attorney and bond counsel.

How Are LIDs Formed?

- hold a public hearing to:
 - consider necessity, location, scope, design and cost of improvements.
 - consider boundaries of the LID.
 - city's contribution to the cost of the improvements.
 - amount to be assessed compared to total special benefits.
- testimony from affected property owners regarding the preceding items.
- arguments concerning assessments against individual properties, whether as to their validity or amount, can only be raised at the subsequent hearing on the assessment roll.
- pass ordinance creating LID

How Are LIDs Formed?

- Subsequently, there is a 30-day appeal period, during which any property owner who has filed a timely written protest before the formation hearing may appeal the formation of an LID to Superior Court.
- An appeal does not automatically stop the LID process. The issues raised in the appeal should be carefully reviewed with the city attorney and bond counsel, however.

How Are LIDs Formed?

- Within 15 days after the legislative body has adopted the ordinance creating the LID, the LID administrator files with the city treasurer the title of the improvements, the LID number, a copy of the diagram or print showing the boundaries of the district (preliminary assessment roll map), preliminary assessment roll or abstract of same showing thereon the lots, tracts, or parcels of land to be assessed.
- The treasurer then immediately posts the preliminary assessment roll on the index of local improvement assessments against the properties affected by the local improvement.

Protest Calculation

- Calculate protest percentage, meaning percentage of assessment represented by those property owners who filed written protests within a 30-day protest period after an LID initiated by the resolution method is created by ordinance.
 - a 60 percent protest level divests the municipality of its power to proceed with the LID improvements.
 - the LID is officially formed after the 30 day protest period if the protest percentage is less than 60% and is politically acceptable.

Thus, where certain property owners within an LID were otherwise obligated to construct some or all of the proposed LID improvements, their “vote” could not be considered when determining whether the 60% protest level (which would divest the municipality of its power to proceed with the LID improvements) has been reached.

Esping v. Pesicka, 92 Wn.2d 515, 598 P.2d 1363 (1979).

LID Administration

- Interim financing, in the form of bond anticipation notes (BANs), interfund loans or warrants, as stated in the formation ordinance, must be arranged.
- Interim financing costs must not be overlooked when computing estimated project costs.
- During construction, informal meetings or mailings to each LID participant at least monthly will keep your public relations star shining bright. Be sure to include financial information, good or bad.

LID Closeout

- The LID closeout process begins when construction is completed or almost so and total costs can be accurately estimated.
- Final costs to be assessed to the properties should be based as nearly as possible on actual costs. Since the costs of closing the LID are included in the final assessment, it is necessary to make some estimates regarding the final financing costs, legal fees and administrative costs.
- Grant funds and contributions from the city or other sources must be deducted from the total project costs to arrive at the amount to be assessed to property owners.

LID Closeout

- It may be possible to reduce financial, legal and administrative costs to individual LIDs by combining several different LIDs into a consolidated bond issue known as a CLID (consolidated local improvement district).
- Once the final LID share of costs has been ascertained, this amount is distributed in a manner similar to the calculation of the estimated assessments on the preliminary assessment roll.
- If a special benefit analysis method of distributing costs for the final assessment roll is used, this study will need to be completed well ahead of the time to prepare the final rolls since the special benefit analysis can be a lengthy and very detailed process.

See S. DiJulio and M. Schechter, *Real Property Deskbook*,
Chapter 19 “Local Improvement Districts”
(WSBA, 3d Ed. 2008).



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