



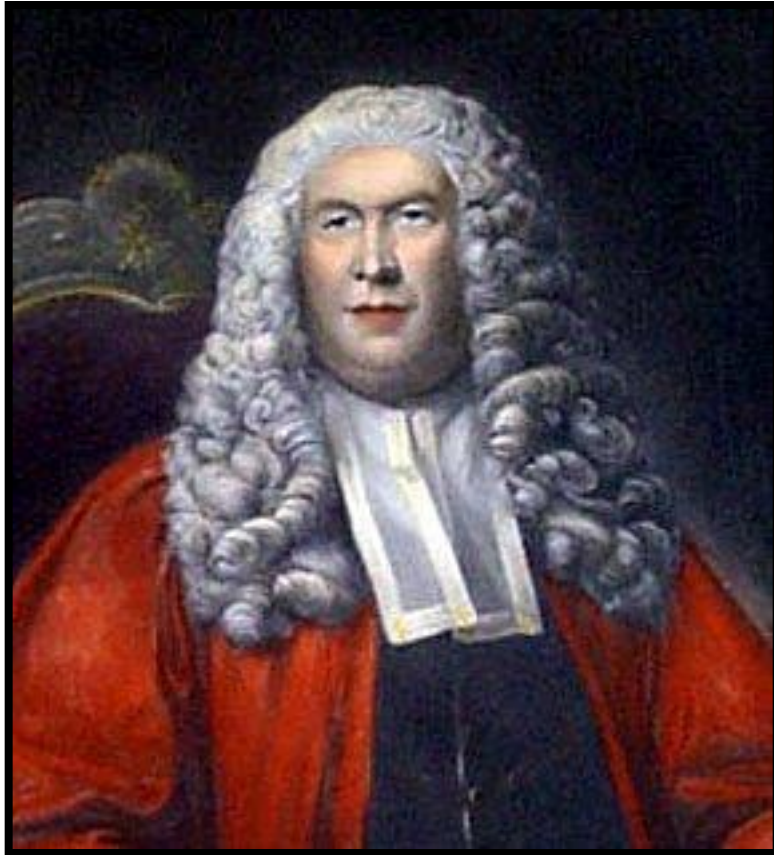
FOSTER PEPPER PLLC

# Local Improvement District Workshop

*LID Hearings*

P. Stephen DiJulio  
Foster Pepper  
Rod Kaseguma  
Inslee Best





# Final Assessment Roll and Hearing

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- The final assessment roll is filed with the city clerk.
- A final assessment roll hearing notice, is to be mailed to property owners whose names appear on the final roll at least 15 days prior to the date set for the assessment roll hearing.
- This notice must state that objections must be made in writing and filed with the clerk on or before the hearing date and that the legislative body will consider the objections and correct or revise the roll as needed and vote on an ordinance confirming the roll.

# Final Assessment Roll and Hearing

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- This notice to be published at least once a week for two consecutive weeks in the official newspaper. The last publication must be at least 15 days before the date fixed for the hearing.

# Final Assessment Roll and Hearing

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- In the final assessment roll hearing, the city council acts as a judge, or - more correctly - a board of equalization, to consider evidence presented by both staff and property owner as to the correctness of the assessment for each parcel.

# Final Assessment Roll and Hearing

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- The final assessment roll hearing should be conducted with possible litigation in mind.

# Final Assessment Roll and Hearing

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- Formal rules of quasi-judicial procedure should be formulated and distributed to the council and LID participants well in advance of the hearings. The hearing must be fair, open, impartial and structured.

# Quasi-Judicial Proceedings – Basis for Disqualification

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- Direct Interest
- Bias
- Prejudice
- Pre-Judgment
- Violation of Appearance of Fairness Doctrine



# Final Assessment Roll and Hearing

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- The assessment roll confirmation hearing should be recorded by a court reporter [or, lesser protection, continuous video in addition to a tape recording].

# Oath or Affirmation



# Cross-Examination



# Final Assessment Roll and Hearing

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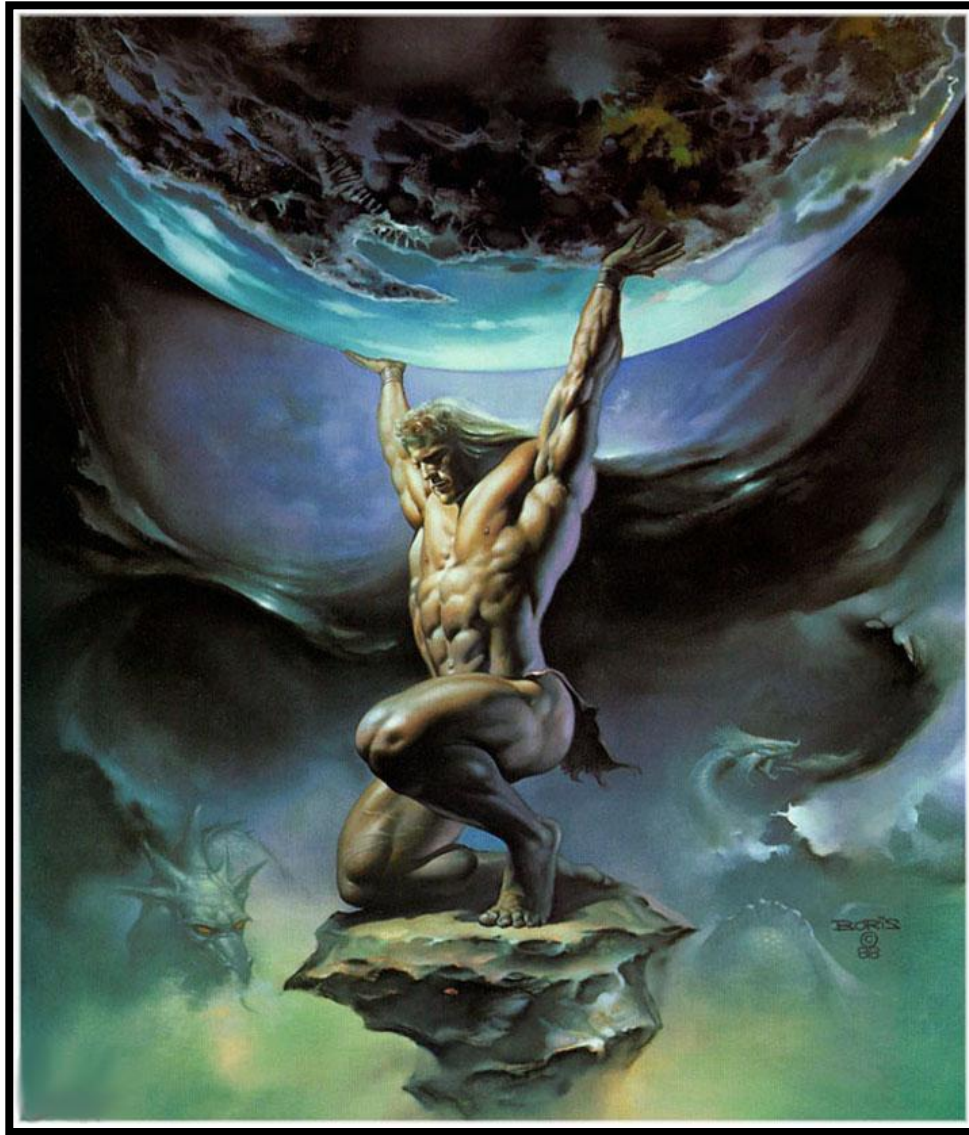
- At the assessment roll confirmation hearing, the LID administrator reports the total final cost, any public participation money paid, or to be paid by the municipality or from grant funds, and that all the proceedings were proper and in conformance with LID statutes, particularly that proper notice has been given.

# Final Assessment Roll and Hearing

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- Testimony protesting the assessment roll should be permitted only if a property owner has filed a written protest prior to the scheduled hearing time.

# Presumption of Regularity and Burden on Protesting Owner



# Final Assessment Roll and Hearing

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- A property owner's appraisal-supported protest is to question the amount of benefit that the property will receive from the improvement. Such testimony, must be countered by an expert opinion from the City's appraiser substantiating the benefits of the improvement to that property.

# Special Benefits

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Special benefits are measured in the following manner:

The amount of the special benefits attaching to the property, by reason of the local improvement, is the difference between the fair market value of the property immediately *after* the special benefits have attached and the fair market value of the property *before* the benefits have attached. [*In re Schmitz*, 44 Wn.2d at 434.]

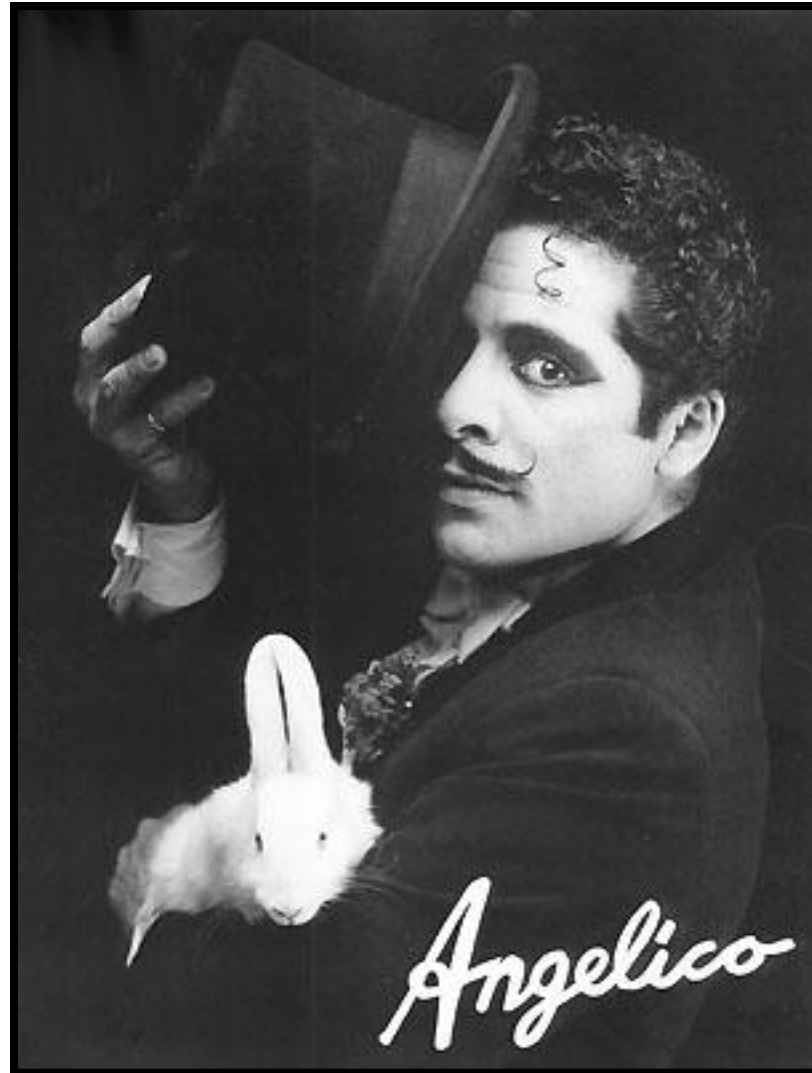


# Need for Expert Testimony

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Expert evidence is clearly required to establish whether or not property is especially benefitted by an improvement and the extent of the benefit. Expert testimony also may be required to establish a disproportionate assessment. [*Cammack v. City of Port Angeles*, 15 Wn. App. 188, 197, 548 P.2d 571 (1976)]

# Disappearing Presumptions



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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).

# Bats of the Law



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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).

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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).

# Final Assessment Roll and Hearing

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- The legislative body has authority to revise or amend the final roll as it sees fit. However, if any assessment is raised or if there is a need to include an omitted property not previously on the roll, such property owner(s) are entitled to new notice and a new hearing just as if no hearing on the final roll ever occurred. Those parties originally on the final roll and whose assessments were not raised will have no opportunity to object at a later hearing.

# Final Assessment Roll and Hearing

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- Downward adjustment to any of the property assessments will require additional money from another source to make up for the reduced assessment. The difference could be made up from public funds; or the difference could be made up by re-assessing the remaining property owners in the district which then requires a new hearing and additional interest and notification costs.



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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).

# Final Assessment Roll and Hearing

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- The entire legislative body makes the final determination without taking additional testimony. Variations of the confirmation hearing process such as a hearing examiner or legislative committee should only be done with competent legal advice. The assessment roll is approved by the majority of the legislative body (by ordinance) confirming the assessment roll. As with the formation ordinance, the assessment roll ordinance should be prepared or approved by bond counsel.

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# **Detailed Findings of Fact and Conclusions of Law**

# Post Assessment Roll Hearing Actions and Appeals

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- After the final assessment roll is confirmed by ordinance, the roll is transmitted to the city treasurer for collection. On the effective date of the confirmation ordinance, a 10-day appeal period begins. During this period, only those parties who have filed timely written objections to the final roll may appeal to Superior Court.

# Post Assessment Roll Hearing Actions and Appeals

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- When the appeal period is over, the treasurer will publish and mail notice that the assessment roll is filed for collection. The notice states that the property owners have an opportunity to pay all or part of their assessments without interest within a thirty (30) prepay period.

# Post Assessment Roll Hearing Actions and Appeals

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- Long-term LID bonds are sold after the prepay period.
- An underwriter purchases the bonds from the municipality. In a negotiated sale, the underwriter commonly structures the issue, prepares the official statement, arranges for the closing and delivery of the issue. In a non-negotiated sale, those services are performed by a financial advisor. It is possible for an investment banker to be the underwriter or to be a financial advisor for the municipality, but not both.
- Internal financing permitted

# Judicial Review





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