

Local and Road Improvement Districts Manual



for Washington State
Sixth Edition



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Rod Kaseguma has advised and represented Washington cities and special purpose districts for over 32 years. He served as an assistant city attorney for the City of Seattle from 1977 through 1985, focusing on general municipal law. From 1985 through 1989, he was an associate with Foster Pepper & Shefelman, focusing on municipal finance, special purpose district representation and LID formation, financing and proceedings. While at Foster Pepper & Shefelman, Rod prepared a comprehensive paper/manual regarding LID assessment delinquencies, liens and foreclosures, and presented it to the Association of Washington Cities and the Washington Association of Sewer Districts.

Rod joined Inslee, Best, Doezie & Ryder, P.S., in 1990. Since joining the firm, he has served as City Attorney and special City Attorney for several cities, and as general counsel and special legal counsel for water-sewer districts, fire districts, a joint operation of fire districts and cities, a ferry district, a flood district and a 911-call center. He is legal counsel to the Washington Association of Sewer and Water Districts. A significant portion of his work for municipalities has involved all aspects of LID's, ULID's and RID's, including formation, financing, special benefit studies, methods of assessment, deferral of assessments, construction of improvements, levying and collection of assessments and appeals from final assessment rolls. Recently, Rod worked on an LID having noncontiguous units of improvements and areas, which is an LID that is authorized but infrequently used.

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P. Stephen DiJulio, a partner in the Seattle office of Foster Pepper PLLC ("FP"), focuses his practice on litigation involving major infrastructure projects. Before joining FP in 1986, Mr. DiJulio was a Seattle Assistant City Attorney. He served in that capacity from 1977 through 1982. Mr. DiJulio was the City Attorney for the City of Kent from 1982 through 1986, serving additionally as City Administrator in 1986. His valuation work for local government has included such diverse public facilities as wastewater treatment plants, solid waste handling facilities, city halls, golf courses and cemeteries, as well as operating utility systems and franchises.

His extensive experience in eminent domain and valuation proceedings includes representation of large and small jurisdictions. See *Wong v. City of Long Beach*, 119 Wn. App. 628 (2004); (successful trail corridor acquisition); *Central Puget Sound Regional Transit Authority v. Miller*, 128 P.3d 588 (2006); and, *HTK v. Seattle Popular Monorail Authority*, 155 Wn.2d 612 (2005).

Mr. DiJulio has served as special litigation counsel for the City of Lynnwood in contested proceedings in federal and state courts over development of the 196th Street Interchange at I-5. Mr. DiJulio represented the City in acquisition of the main, 12-acre parcel necessary for the freeway interchange construction. He also represented the City in the extensive Local

Improvement District valuation proceedings providing necessary funding for that project. Similarly, the City of Kent's extensive transportation corridor financing programs (LIDs) were represented by Mr. DiJulio, and were affirmed in *Little Deli Marts, Inc. v. City of Kent*, 108 Wn. App. 1, 32 P.3d 286 (2001); rev. denied 145 Wn.2d 1030 (2002) and in *Tiffany Family Trust v. City of Kent*, 119 Wn. App. 262, 77 P.3d 354 (2003); affirmed 155 Wash.2d 225, 119 P.3d 325 (2005). He represented the City of Seattle on the recently successful South Lake Union Streetcar LID.

For the Seattle Monorail Project, Mr. DiJulio was integral to the process for valuing air rights as well as the assessment of damages relating to the proximity of elevated transit. He has managed relocation assistance contracts and has successfully managed both claims for and opposition to claims for relocation benefits. And, with Professor Richard Settle, Mr. DiJulio was successful in redefining the law regarding condemnation of private ways of necessity in *Wagle v. Williamson*, 51 Wn. App. 312, 754 P.2d 684 (1988) and 61 Wn. App. 474, 810 P.2d 1372 (1991).

Mr. DiJulio has extensive trial experience in environmental and administrative actions. He served as Special Deputy Prosecuting Attorney in the eight lawsuits involving the Klickitat County solid waste management program, and the development of the Roosevelt Regional Landfill. See, e.g., *Klickitat Citizens v. Klickitat County*, 122 Wn.2d 619 (1993); *Waste Management v. Clark County*, 115 Wn.2d 74 (1990) (counsel to Washington State Association of Counties). He successfully defended King County's solid waste program in *Rabanco v. King County*, 125 Wn. App. 794 (2005), including the management of the process for valuation of the County's Cedar Hills Landfill, and lease rates relating to that use of County property by a County department.

He regularly represents local government in litigation over constitutional disputes and annexation. He successfully argued on behalf of Moses Lake before the Supreme Court in defense of cities' petition annexation authority. *Grant County Fire District No. 5 v. City of Moses Lake*, 150 Wn.2d 791 (2004). In *Brower v. State*, 137 Wn.2d 44 (1998) he represented the Seattle Seahawks in defense of a state-wide referendum election supporting development of Qwest Field.

Mr. DiJulio regularly represents associations of municipalities, including the Association of Washington Cities, Washington State Association of Counties and the Washington Fire Commissioners Association. He is a lecturer at the University of Washington's Evans Graduate School of Public Affairs.

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John Carpita joined MRSC in January 1996. He has BS and MS degrees in Civil Engineering from Montana State University. A registered professional engineer since 1972, he is currently registered in Washington. John has had a widely varied 40-year career as a consultant, county engineer, city engineer and project manager. He was project manager for two large roadway and bridge improvement projects with the City of Issaquah combining TIB funds, FHWA funds and local improvement districts. With MRSC, John is a resource for engineering design, contract document preparation, construction contract issues, local improvement districts, sewer, water, storm drainage and solid waste issues, and resource conservation.

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Steve, a native of Washington, has provided financial advisory and underwriting services for the municipalities of the state of Washington and the northwest for over 30 years. During his career, he has arranged over \$120 million of local improvement district financings for cities, counties, and special purpose districts and has achieved recognition as a leader in the area of assessment backed financing. In addition, he has served as advisor or investment banker for over \$3 billion in other forms of financing for municipalities of the Northwest, including cities, counties, hospital districts, ports, housing authorities and special purpose districts. He formed his own financial advisory firm in 1999 to concentrate his services on his primary client base of cities and counties.

Steve is a member of Washington Finance Officers Association (WFOA), Association of Washington Cities (AWC), and the Washington Municipal Treasurers Association (WMTA) for all of which he has been a frequent presenter at conventions and seminars. He has also often been a panel member at conventions and seminars on LID financing of WMTA, WFOA, AWC and of the Municipal Research and Services Center (MRSC) and APWA LID Committee presenting LID seminars for cities at various locations around the state. Steve co-authored the LID/RID Procedures Manual for Washington issuers as an active member of the American Public Works Association LID/RID Subcommittee. He has been asked by the House Local Government Committee to serve as a member of the Legislative Drafting Committee for local improvement district legislation to give the investment market perspective to the legislative drafting effort. In addition, he has been asked to testify before the House and Senate Local Government Committees of the State Legislature at hearings considering the development of new assessment district legislation.

Steve is an MBA graduate of Eastern Michigan University and has held Series 7 General Securities and Series 52 and 53 Municipal Securities licenses.

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Robert J. Macaulay is the President and co-owner of Macaulay & Associates, Ltd., a real estate appraisal and consulting firm. He received the MAI designation from the Appraisal Institute in 1995 and is a Certified Real Estate Appraiser – General Classification with the state of Washington. Mr. Macaulay is also a member of the International Right of Way Association, an approved appraiser and review appraiser with the Washington State Department of Transportation (WSDOT) and serves on the board of the Washington Center for Real Estate Research at Washington State University. Mr. Macaulay's appraisal experience is diverse and includes an emphasis on special benefit/proportionate assessment studies in connection with local improvement districts for a diverse range of municipal clients. Presenting testimony at quasi-judicial public hearings on these projects is also part of his expertise.

The firm has extensive experience dating back to 1975 with local improvement district (LID) special benefit and feasibility studies, including a variety of road improvement, utility and other infrastructure projects. Between 1990 and 2000, in addition to over 30 other feasibility and special benefit studies, almost a dozen major assignments were completed for projects costing from \$1.5 to \$82 million. Clients included the cities of Bellevue, Bothell, Burien, Issaquah, Lacey, Lake Stevens, Lynnwood, Ocean Shores, Redmond, Spokane, Sumner and Tukwila. Details on

individual projects will be provided upon request. Since 2000, major special benefit/proportionate assessment studies have included road improvement projects for the cities of Burien and Covington (2003), a freeway interchange and arterial improvement project for the City of Sumner (2002 to 2004), a utility local improvement district for the City of Lake Stevens (2005), a city-wide road improvement project for the City of Ocean Shores (2006 to 2007) and a project improving access to the Southcenter regional shopping mall for the City of Tukwila (2006 to 2009). In the last three years (2006 to 2009), economic feasibility studies have been completed for the cities of Burien, Ferndale, Freeland, Kent, Lynnwood, Ocean Shores, and Yelm.

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Ralph Rodriguez has been involved with Local Improvement Districts since 1982. Since 1997, he has managed the implementation of the vision, strategy, priorities, plans and goals established by the Tacoma City Council, Tacoma Public Utility Board, City Manager and Utilities Director for the Local Improvement District (LID) program in the Public Works Department and Tacoma Public Utilities (TPU) Tacoma Power. He provides guidance and support all City of Tacoma departments for their LID program, including, but not limited to; street and alley paving, sidewalks, street lighting, sanitary sewer mains, new underground electrical service as well as the conversion of overhead utilities to underground, as well as "Mega" LIDs creating "Urban Villages" within existing commercial neighborhoods. Ralph also is responsible for the tracking and collecting of fees related to all sanitary sewer connection charges and administering "Utility Reimbursement Agreements".

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Scott Thomas' law practice focuses on representing municipal governments, as well as contractors, architects, and engineers in construction related issues. Mr. Thomas has served as an Assistant City Attorney for the City of Tacoma, as City Attorney for the City of Mount Vernon, and currently serves as the City Attorney for the City of Burlington. Mr. Thomas has advised his client's Finance and Public Works Departments in numerous matters, including issues concerning the formation of local improvement districts, and the foreclosure of delinquent LID assessments.

Mr. Thomas took his B.S. in Architecture from the University of Nebraska in 1983, and his J.D. with honors from the University of Puget Sound School of Law in 1993.

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Pat has 25 years experience with the Spokane County Public Works Department.

He is currently the RID Administrator with the Spokane County Division of Engineering and Roads (1999 - present). Supervises a three-person section, which includes an Engineering Technician

3 and an Engineering Technician 2, which is responsible for the coordination of all aspects of the RID process; from initial citizen contact through bond sale. The team creates an average of eight to ten new RIDs per year.

For 19 years (1983 - 1999 and 1976 - 1979) he was a Senior Planner with the Spokane County Division of Planning. The majority of time was spent in the Long Range Planning Section involved with local implementation of the Washington State Growth Management Act (GMA). Pat also spent a number of years with the Current Planning Section responsible for various aspects of land development review such as zoning and subdivision administration.

He worked four years as a Private Consultant (1979 - 1983) with land development consulting firms in Washington and Montana serving as a Planner or Land Survey Technician on a variety of private and public projects.

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Gary Bourne, PE, PLS, has been involved in the design and construction of public works projects for more than four decades. During his professional experience he has provided consulting assistance from Alaska to California including long range planning, funding acquisition, design, management, and administration of public works facilities. For the last 10 years Gary has specialized in LID funding and has been involved in more than 40 successfully completed LID funded projects over his career. Gary reports that the last 10 years of LID work has been more challenging than the first 30 years as the cost of improvements have continued to increase and supplemental funding has diminished and most recently disappeared. Gary's knowledge and experience as a consulting engineer, surveyor and city engineer provides him with a broad understanding of public works projects from conception to construction.

Completed recently was perhaps the most unique LID for the City of Bainbridge Island's South Island Sewer Project which featured a matrix driven assessment process for five distinctly different areas in one LID. Most recently he managed the formation of a \$24,000,000 sewer LID for the City of Edgewood completed before the current economic downturn at the peak of property values. This LID will now present new challenges as the final assessment roll process will be held with what is anticipated to be depressed property values.

Chapter 1 Introduction

LIDs and Other Strange Creatures

Local improvement districts (LIDs) and road improvement districts (RIDs) are more American than apple pie (but considerably less so than motherhood). They are uniquely American in origin, with roots back to colonial times. Most municipal governments in Washington can use LIDs, with mostly procedural differences distinguishing statutes for individual types of municipal government. Counties can use LIDs for water, sewer and storm sewer facilities, but must use RIDs for road and street improvements. The following (non-inclusive) table lists representative municipal governments and their enabling LID statutes:

Municipal Government	Statute
City or Town	Ch. 35.43 RCW
County Water and/or Sewer County Road	Ch. 36.94.220 RCW Ch. 36.88 RCW
County Service District	Ch. 36.83.050 RCW
Water District	Ch. 57.16.050 RCW
Sewer District	Ch. 56.20.010 RCW
Fire Protection District	Ch. 52.20.010 RCW
Irrigation District	Ch. 87.28.200 RCW
Transportation Benefit District	Ch. 36.73.080 RCW
Port District	Ch. 53.08.050 RCW
Park and Recreation District	Ch. 36.69.200 RCW

By far the longest body of LID statutes is that of cities and towns in Chapters 35.43 through 35.56 RCW. For this reason and because a number of other enabling statutes refer to the city and town statutes, they are used as the basis for the procedures in this manual. Not all municipal governments have the flexibility to use both methods (petition and resolution) of LID formation described in the city and town statutes. In any event, non city/town municipal governments should check their own enabling statutes and by all means involve their agency attorneys in the LID process.

Smaller agencies generally use LIDs or RIDs infrequently, mostly for larger projects. Consequently, each new LID/RID becomes a learning experience for the agency, because the person who did the last LID/RID has retired or moved on. There may be no cure for this, other

than developing a good set of LID ordinances, policies and procedures. Some larger agencies, notably Tacoma and King and Spokane Counties have proactive programs in which they promote LID/RIDs not only for larger projects, but also for neighborhood improvement projects. See Chapter 8 for descriptions of programs within the state and in other states. Some agencies even have non-LID cooperative improvement programs, also described in Chapter 8.

LIDs and RIDs are special assessment districts in which improvements will specially benefit primarily the property owners in the district. They are created under the sponsorship of a municipal government and are not self governing special purpose districts. To the extent and in the manner noted in the enabling statutes, they must be approved by both the local government and benefitted property owners. There are other strange creatures that look like LIDs in that assessments are levied against property in a specially benefitted area but whose formation does not follow LID or RID statutes. These include latecomer assessments, sidewalk assessments and parking and business improvement areas. See Chapter 8.

“Are We Having Fun Yet?”

LIDs are more fun than:

- ...root canals without Novocain
- ...a three-month visit from your in-laws
- ...balancing agency budgets...

Did you hear about the finance director who, through an extremely astute investment, increased the cash value of the city's investment portfolio by \$3 million? When asked how the city would spend this unexpected windfall, he said: “Well, I guess we'll just keep on doing LIDs (Local Improvement Districts) until it's all gone.”

(John Carpita, Public Works Consultant, Municipal Research and Services Center, *Municipal Research News*, June 1996)

The preceding is more theatrical than actual, as LIDs do not become a drain on a city's general fund unless something goes really wrong. LIDs, however, do have a reputation as difficult to administer, time consuming, and a public relations disaster waiting to happen. LIDs can play a very positive and powerful role in developing and enhancing your city's infrastructure. In this section, we'll examine a few aspects of this uniquely American method of funding infrastructure improvements and how to ensure a worry-free LID financed project.

What Is an LID or ULID?

Local Improvement Districts (LIDs) are a means of assisting benefitting properties in financing needed capital improvements through the formation of special assessment districts. A variation of the LID is the Utility Local Improvement District (ULID). LIDs can play a very positive and powerful role in developing and enhancing your municipality's infrastructure.

LIDs permit improvements to be financed and paid for over a period of time through assessments on the benefitting properties. The difference between ULIDs and LIDs is that utility revenues are pledged to the repayment of the ULID debt, in addition to the assessments on the benefitting properties. State statutes provide that a LID can be converted to a ULID after formation; the reverse is not possible.

LIDs Are Only Financing Tools

The most important point to remember about LIDs is that the entire LID process is about **financing** capital improvements, not constructing them. Nowhere in the LID statutes will you find information on technical feasibility, design, cost estimates, construction management expertise and project closeout requirements. It is assumed that a city will do a superb job of design, estimates and construction management for the infrastructure improvement, just as for any other project not financed by a LID.

LID processes lead, ultimately, to the sale of bonds to investors and the retirement of those bonds via annual payments by the property owners within a district. Goals of the LID process are twofold: to present a bond portfolio to investors that will entice them to invest at as low a rate of return as possible; and to assess property owners as fairly as possible in relation to the special benefit received.

LIDs cost money to administer. Interim financing incurs interest costs. Bond sales involve bond counsel, underwriters and other costs. All these costs must be added to the share of project costs that LID participants are expected to assume. Unless reminded at times through the process, LID participants may unfairly compare project costs from other, non-LID projects to the total cost to be assessed.

LIDs Are Personal

LIDs are very personal. Projects not funded by LIDs may be controversial, cause traffic disruptions and generally make people irate. An LID asks them to not only put up with a project they may not like personally and which may disrupt their lives, but also to pay for it. Even if they are in favor of the project, property owners are going to be more interested in the project and cost issues than they would be if they had no personal financial stake.

Involvement of as many potential LID participants as possible in the early stages of a project is a necessity. Informal meetings to discuss potential project scope, benefit area and other concerns will not only give the participants a sense of being involved but may also help a city to determine whether an LID will be feasible. Continued involvement of LID participants via participation in a steering committee during the environmental review and design stages will help the project team avoid unnecessary disruption to adjoining property owners. When an LID formation hearing is scheduled, project staff should be very open to individual or group meetings to explain overall LID processes and the type of testimony that is appropriate at the formation hearing.

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. When the final assessment roll hearing is scheduled, project staff should, again, be very open to individual or group meetings to explain the assessment roll and the sort of testimony that is appropriate at the hearing.

LIDs Are Complicated and Require a Cast of Thousands

LIDs are not the most complicated thing in the world (programming a VCR (remember them?) is much harder), but they do require attention to detail and processes. Checklists and flow charts are very useful, perhaps even essential. Project management software for personal computers

is also available. Several agencies have provided MRSC with samples, so there is no need to develop your own from scratch.

Participants in the LID process include property owners and the general public, public works staff, finance department staff, the city clerk, the mayor, council, city attorney, investment bankers, underwriters, financial advisors, engineers/architects, real estate appraisers and bond counsel. One person on staff must be designated as the LID administrator. This person should not be a department head simply because of the amount of detail work required. The LID administrator can certainly have other duties, but should not be overloaded. Training is important. Computer skills are essential, particularly in electronic spreadsheets and word processing. Superhuman powers are useful, as leaping over tall buildings to escape irate property owners may be necessary. Depending on the culture of the agency, staff availability and capabilities, it is common to have a consultant be the LID administrator and/or the LID advisor and public relations manager.

LIDs Don't Have to Create Hardships

Of legitimate concern are low income senior citizens and those who are economically disadvantaged. No councilperson wants to vote for a project that will put someone out of their home. Two types of 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. In both of these cases, the deferred assessment does not go away, but becomes a lien against the property. Other options for property owner relief may be available.

Deferrals and other options for relief should be publicized early in the process, with a concerted effort made to identify those who may need such relief. Elected officials also need to know these options so that they can advise citizens who may contact them. Reference these options in the public hearings and enter any documentation available regarding your efforts to identify property owners eligible for deferrals.

LID Assessments Are Subject to Strict Criteria

Statutes require 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 benefitted 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. Even if a project lends itself very well to a front footage 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 Final Assessment Roll Hearings Are Quasi-Judicial

Cities should do their absolute best to work with property owners and resolve their concerns. Lawsuits will happen despite a city's best efforts to do so. Statutory limitations and fairness to other property owners prevent a city from giving in to an individual property owner's every demand. Formation hearings and final assessment roll hearings should be conducted with

possible litigation in mind. Formal rules of quasi-judicial procedure should be formulated and distributed well in advance of the hearings to the council and LID participants. In the final assessment roll hearing, the city council acts as a board of equalization, to consider evidence presented by both staff and property owner as to the correctness of the assessment for each parcel. The hearing must be fair, open, impartial and structured.

When the Natives Are Restless

The Golden Rule

Often overlooked in the rush to get projects accomplished and LID processes completed is the golden rule – “do unto others as you would have them do unto you.” This may seem trite, but many a public relations gaffe can be avoided if we, as project engineers, LID administrators, etc., seriously consider probable impacts of our projects and how we would react to a similar proposal affecting our property. Honesty, openness and a caring attitude are just as important as technical skills and knowledge.

In addition to the above we should remember that LID funded projects are “by the people and for the people”. The common attitude that city hall knows best will not promote or project the desired positive communications with property owners which is absolutely necessary if the goal is “to get to yes” at the formation hearing.

Every property owner must be told the probable outcome of any scenario discussed. If a property owner has not been totally informed by staff and later feels they have been treated unfairly, they will have numerous opportunities in the future to remember the time they were not told the whole story. This can manifest itself as a backlash later at the Formation or Final Hearing and may eventually end up as a major complaint to the elected.

Public Relations Plan

An LID financed project tests an agency’s public relations skills like no other, for reasons mentioned in the introduction. As each project is unique in its scope and impacts, a separate 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. Examples of each of these are readily available.

Public relations plans for an individual project need not be elaborate, but should recognize its unique scope and potential impacts. Use of individual meetings, open houses, formal or informal meetings and hearings at specific times during the project development process must be identified. Required hearings or meetings should be “flagged,” with notification requirements identified. The plan should be detailed enough to include those steps necessary for review and approval by other city or local agencies as well as the mayor and council. Appendix B contains a sample matrix for citizen participation in an EIS process, which can be adapted for use for other project phases, including LID processes.

A public relations plan is a blueprint for communication. Public officials must have a sincere desire to communicate with property owners and the general public. Anticipation of concerns about, and objections to, a project is not enough – the agency must hear those concerns and objections directly expressed by property owners. The public responds better to accurate

information and identification of all parameters that will affect final decisions when made. It is important to identify, at the beginning of a project, those facets which are unchangeable and those which can be affected by public response. Identify procedures which will be followed, and inform the public as to when input will be accepted or solicited.

When an LID project is large or complex and potentially controversial it is often advisable to prepare a regularly published project newsletter. The newsletter will provide accurate and up to date information regarding project progress including; changes, schedules and major costs and funding developments. It is also advisable to have a website with the latest information upon which the newsletter would also be published.

LID financed projects are unique in that property owners have the power to decide, collectively, whether they will pay assessments for improvements to be built in the project. If they are not convinced that the project is needed and cost effective in the early stages, they may vote against it. An ideal LID financed project would be one in which specific property owner needs and overall city goals coincide precisely at minimal cost to both, with no adverse environmental impacts. Ideal projects are rare. More common are projects where compromises are needed and in which a certain degree of disaffection exists or is generated between the city and property owners.

Educating the public as to the what, how, when, why, etc., of a project is a never ending challenge, as new people are always entering the process. In addition, even those who have been previously involved will remember the project as it existed at that slice of time when they were last involved. It is important, in preparation for any meeting or project discussion, to think about the public participants in the meeting and where they are in relation to the current status of the project. Spend at least a few minutes at the beginning of the meeting making sure that all participants are aware of the current project status and on the same wavelength as nearly as possible.

Informal and Formal Meetings

Meetings can be the bane of a public servant's existence. In fact, an LID administrator is defined as a person who is in one meeting and mentally preparing for the next. All kidding aside, meetings with property owners and the general public are the most important element of any project's public relations plan. Informal meetings with individual or small groups of property owners in the early stages of a project can help the city to determine a possible scope for the project, provide education about project approval and LID processes and help to evaluate probable support for an LID. Open houses are particularly effective in the predesign and EIS stages of a project, before any alternatives have been formulated. Larger, more formal meetings will be needed as the project progresses. In addition to require public hearings for EIS, design approval, or LID processes, a working (steering, advisory) committee should be established. With representation from as many competing interests as is possible (including property owners from the potential LID area), this committee can be an effective way to review design alternatives, identify potential fatal flaws, avoid unnecessary disruption to adjoining property owners and monitor probable LID support. This committee should meet monthly during the redesign and EIS stages and as frequently as needed during the design and approval stages.

When the LID formation hearing is scheduled, project staff should be very open to individual or group meetings to explain overall LID processes and the type of testimony that is appropriate at the formation hearing. 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. When the final assessment roll hearing is scheduled, project staff

should, again, be very open to individual or group meetings to explain the assessment roll and the sort of testimony that is appropriate at the hearing.

Meeting Techniques

To assure a productive meeting, the following (or similar) guidelines should be followed:

1. Plan the meeting (who will attend topics to be covered, location, etc.) in advance.
2. Have a written agenda.
3. Start on time.
4. Use the agenda.
5. Keep the meeting moving.
6. Build consensus.
7. Finish on time.
8. Keep minutes in relation to the agenda items.

Meeting locations other than city hall or recognized central meeting places (i.e., homes, schools, etc.) should be cautiously evaluated in terms of convenience, safety, wheelchair accessibility and emergency response time. Other meeting techniques are included in Appendix B. Meeting times should be planned for maximum convenience to property owners.

Public Hearings

See Chapter 5.

Media Relations

“Turn your back to the camera and give an assumed name.”

This is what most of us want to do when confronted by a reporter or television news crew. We also know this is not practical. Media coverage of LID proceedings is more than likely due to the direct impacts that LIDs have on property owners. A proactive policy of responding to the media will result in a better informed citizenry, an improved perception of local government, a positive city image and a strengthened sense of community.

Media relations policies should establish a primary contact for the city, but avoid limiting media access to employees. Develop a healthy working relationship with the reporters or news crews on the city hall beat. Even if the story being written is negative, provide the reporter with as much information as you would for someone writing a positive story. Take as much time as necessary to explain policy or technical issues. Things that are second nature to you are probably so much Greek to someone who does not deal with them on a daily basis. Remember that reporters have daily deadlines. Prompt responses to requests for information will make their day and probably help to give the story a more positive slant.

Reporters need as much detail as possible, good photos, and simple drawings. Television crews need visual confirmation that you exist and will not hesitate to drag a camera and several technicians into your cubicle if needed. Their needs are very different. Anticipate both sets of needs. Be as concise, clear and factual as possible.

When interviewed by any media, remember that the reporter does not expect you to have every answer at your fingertips. “I don’t know the answer to that question, but I’ll find out and get right

back to you,” is a perfectly legitimate response. As much as possible, prepare for the interview in advance. Don’t ramble. Repeat your key points several times. Rephrase any questions you are uncomfortable with, and then respond to the rephrased question. Speak slowly and enunciate clearly. *Learn enough journalistic jargon to know what it means to be on and off the record.*

Chapter 2

Legal Summary

I. Special Benefit Assessment Financing

A. Some Basic Concepts

1. Fundamental Requirements

a. Express statutory authority

[A] municipal corporation's powers are limited to those conferred in express terms or those necessarily implied. In re Seattle, 96 Wash.2d 616, 629, 638 P.2d 549 (1981).

. . . The test for necessary powers is legal necessity rather than practical necessity. Hillis Homes, Inc. v. Snohomish Co., 97 Wash.2d 804, 808, 650 P.2d 193 (1982). As we stated in Hillis: "[i]f the Legislature has not authorized the action in question, it is invalid no matter how necessary it might be." [Emphasis added.]

Chemical Bank v. WPPSS, 99 Wn.2d 772, 792, 666 P.2d 329.

b. Compliance with legal procedures

"[W]here a person or board is charged by law with a specific duty and the means for its performance are appointed by law, there is no room for implied powers, and the means appointed must be followed, however inadequate may be the result." [Emphasis in original.]

State ex. rel Eastvold v. Maybury, 49 Wn.2d 533, 539, 304 P.2d 663 (1956).

2. Public improvements can confer both general benefits and special benefits on property in the community.
3. Property in Washington may be assessed for the special benefits conferred by the installation of certain public improvements. The special benefit assessment process has been authorized and implemented in most states for many years. See, 14 McQuillin, Municipal Corporations, §38.02 (3rd Ed.)

Washington cities and towns may form local improvement districts (LIDs) or utility local improvement districts (ULIDs) as authorized by RCW 35.43.040 and .042.

4. Legality has been recognized since the nineteenth century
"The principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement"

Norwood v. Baker, 172 U.S. 269, 278-279; 19 S.Ct. 187, 190; 43 L. Ed. 443, 447 (1898).

5. Special benefits versus general public benefits
"The theory upon which general taxation proceeds is entirely distinct from that of local assessments. General taxation is sought to be enforced against all classes of property upon an ad valorem basis, while local assessments are limited to real property within a given district, and are based entirely upon the theory of special benefit by which the value of property is enhanced in excess of the general good. General taxation is enforced to serve the necessary purposes of government, while local assessments are enforced to serve mere local convenience, and for the additional benefit of private property holders."

McMillan v. Tacoma, 26 Wash. 358, 361, 67 P. 68 (1901).

6. Amount of assessment
 - a. May not exceed special benefit to a parcel
"Under the local improvement district statutes, only that portion of the cost of the local improvement which is of special benefit to the property can be levied against the property.

. . . Property not benefited by local improvement may not be assessed, and special assessments for special benefits cannot substantially exceed the amount of the special benefits.

. . . The amount of the special benefits attaching to the property, by reason of the local improvements, 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." (Emphasis in original.)

In re Schmitz, 44 Wn.2d 429, 433-34, 268 P.2d 436 (1954).

- b. Must be proportionate to other assessments
"The method utilized is to assess each parcel of land within the district as nearly as reasonably practicable in accordance with the special benefits gained by that parcel from the entire improvement, and to assess each parcel its proportionate share in relation to other parcels throughout the improvement district. As phrased by Professor Trautman in his article 'Assessments in Washington' 40 Wash. L. Rev. 100, 120, 'The questions are: to what extent is the particular tract benefited by the entire improvement, and is the particular tract assessed proportionally with the other property included within the improvement district.'" (Emphasis in original.)

Sterling Realty Co. v. Bellevue, 68 Wn.2d 760, 765, 415 P.2d 627 (1966).

B. Sources of Applicable Law

- 1. Constitutions
 - a. Federal and state
 - b. Due Process and Equal Protection considerations
- 2. Statutes governing LIDs and ULIDs
 - a. Title 35 RCW, especially Chapters 35.43, 35.44, 35.45, 35.49, 35.50, 35.51 and 35.54 RCW.
 - b. See also, Titles 36, 54 and 57 RCW.
- 3. Administrative regulations
- 4. Court opinions

II. Financing Alternatives for Public Improvements

A. Customary Sources of Funding

- 1. Current budget or funded depreciation
- 2. Excess levies
- 3. Grants
- 4. General obligation bonds
- 5. Revenue bonds
- 6. Assessment bonds
- 7. Hybrids with multiple payment sources
- 8. Short-term obligations
- 9. Others?

B. Reasons for Choosing an Assessment-Based Financing for Numerous Kinds of Projects Authorized by RCW 35.43.040.

- 1. Appropriateness due to special benefits
- 2. Political realities
- 3. Unavailability of other funding
- 4. Advantages of combining payment sources

III. Overview of the Assessment Financing Process

A. Participants in the Process

1. Property owners and the public
2. Public officials and staff
3. Advisors, consultants and legal counsel
 - a. Investment bankers, underwriters and financial advisors
 - b. Engineers and architects
 - c. Local counsel and bond counsel
 - d. Real estate appraisers
 - e. Additional technical consultants
 - f. Others?

B. Usual Sequence of Events

For an outline of procedures and checklist of documents relating to the statutory assessment district process that involves, among other things, three notices to property owners and two hearings, see Exhibit A attached. Typically, there also will be four ordinances.

1. Initiation of an LID, which may contain property outside the City (RCW 35.43.030) and may include territory that is noncontinuous or not contiguous (RCW 35.43.050).
 - a. By petition (from owners of a majority of the area within the LID). RCW 35.43.120 and RCW 35.21.005.
 - b. By resolution. RCW 35.43.140 and .150.
2. Creation of the assessment district: the “preliminary assessment roll” or formation hearing. RCW 35.43.100 and .150.

“The purpose of the notice at this stage is not to accord a hearing upon the validity of the assessment, which has not yet been determined or the benefit to the property within the district, which has yet to be determined, but to accord a hearing upon the limits of the proposed district and upon the question whether the district should be formed at all. Objections by property owners at this stage should be directed to those questions.”

Trautman, Assessments in Washington, 40 Wash. L. Rev. 100, 112 (1965).

3. Protests and finality of the formation
 - a. Written protests by owners of property subject to 60% of the “total cost of the improvement” will deprive the Council of jurisdiction to proceed. RCW 35.43.180.
 - i) Kasper v. Edmonds, 69 Wn.2d 799, 420 P.2d 346 (1966) regarding effects of City contributions.
 - ii) Esping v. Pesicka, 92 Wn.2d 515, 598 P.2d 1363, (1979) regarding the City’s relinquishment of contractual rights as constituting a contribution.
 - b. Time limitation and barring of collateral attacks on formation of an LID. RCW 35.43.100. Hulo v. Redmond, 14 Wn.App. 568, 544 P.2d 34 (1975).
4. Interim financing by means of notes, lines of credit, warrants or interfund loans. Such interfund loans usually should be accompanied by declarations of intent to reimburse pursuant to Treas. Reg. §1.150-2, and

be evidenced as prescribed by the State Auditor. See, BARS Manual, Vol. 1, Ch. 3, Part 4.

5. Bidding and construction. RCW 35.43.190.
6. Confirmation of assessments: the “final assessment roll” hearing provided for in RCW 35.44.100. This hearing can be conducted before a committee of the Council or a hearing officer as authorized by RCW 35.44.070.

An LID may be converted to a ULID any time prior to adoption of the ordinance confirming assessments. RCW 35.43.043.

“The hearing on the assessment roll is the proper time for raising the questions whether special benefits have been conferred and whether the amounts of individual assessments are correct.”

Trautman, Supra, at 123.

7. Appeals and the finality of assessments. RCW 35.44.190 et seq. Note the language of the statute and the detailed mandatory requirements.

“Whenever any assessment roll for local improvements has been confirmed by the council, the regularity, validity, and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the council upon the assessment roll and the confirmation thereof shall be conclusive in all things upon all parties. They cannot in any manner be contested or questioned in any proceeding by any person unless he filed written objections to the assessment roll in the manner and within the time required by the provisions of this chapter and unless he prosecutes his appeal in the manner and within the time required by the provisions of this chapter.”

An appellant seeking judicial review must file timely written objections with the city, file notice of appeal with both the city and Superior Court, file bonds, file in court a transcript of proceedings prepared by the city, and give notice that the cause will be called up for hearing, all in a limited time in conformity with specific statutory requirements.

8. Judicial review and the teaching of some important cases regarding assessment procedures:

Abbenhaus v. Yakima,

89 Wn.2d 855, 576 P.2d 888 (1978) - review is on the record and all expert appraisal testimony must appear there

Fisher Bros. v. Des Moines Sewer Dist.,

97 Wn.2d 227, 643 P.2d 436 (1982) - substantial compliance with statutory requirements by property owners may suffice on appeal

In re Indian Trail Trunk Sewer Sys.,

35 Wn. App. 840, 670 P.2d 675 (1983) - un rebutted evidence in the record even gratuitously can overcome favorable presumptions

Patchell v. Puyallup,

37 Wn. App. 434, 682 P.2d 913 (1984) - there are still some limits to acceptable substantial compliance on appeal

Bellevue Associates v. Bellevue,

108 Wn.2d 671, 741 P.2d 993 (1987) - costs of certain separate and distinct improvements may be levied properly in only part of a district

Doolittle v. Everett,

114 Wn.2d 88, 786 P.2d 253 (1990) - independent current use of adjoining parcels may prevent combining them for assessment purposes

Bellevue Plaza v. Bellevue,

121 Wn.2d 397, 851 P.2d 662 (1993) - Council should adopt a non-speculative assessment method that produces equitable and valid assessments appropriate for the circumstances and so find

9. Collection of assessments, prepayments and subsequent annual installments. Chapter 35.49 RCW.
10. Permanent financing, usually by means of either LID bonds or ULID revenue bonds, occasionally by installment notes. Chapter 35.45 RCW.

IV. Crucial Decisions to Consider From the Outset

- A. Assembling the Participants
- B. Designing the Improvements
 1. Location
 2. Size
 3. Cost
- C. Establishing the Boundaries of the Assessment District. RCW 35.43.080.
- D. Selecting the Method of Assessment. See, RCW 35.44.047, granting discretion to the Council.
 1. Traditional zone and termini approach described by RCW 35.44.030 and .040.
 2. Variations on frontage and area charges
 3. Additional formulas
 4. Per lot or connection
 5. Special benefit and proportionate assessment appraisal methodologies
 6. Others?
- E. Key Points to Remember
 1. There are several presumptions in favor of local governments in assessment proceedings.
 - a. All actions taken were legal
 - b. Property is specifically benefited
 - c. Assessments are no greater than the benefits
 - d. Assessments are equitable and proportionate

- e. Assessments are fair and valid
2. Facts overcome presumptions.
“The issue of special benefits is a judicial question, subject to review by the courts This question is ordinarily one of fact, dependent upon the physical condition, locality and environment of the property involved, and the character of the improvement. It is presumed that an improvement is a benefit; that an assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.”

Trautman, Supra, at 118.

But, as the courts have said:

“A presumption is not evidence and its efficacy is lost when the other party adduces credible evidence to the contrary 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).

Nevertheless, presumptions will prevail if not rebutted.

[E]vidence of appraisal values and benefits is necessary to rebut these presumptions. Appellate review of such cases does not permit an independent evaluation of the merits .

..

It is presumed that a local improvement benefits property unless the challenging party produces competent evidence to the contrary. The burden of proof shifts to the City only after the challenging party presents expert appraisal evidence showing that the property would not be benefited by the improvement. [Emphasis added.]

Seattle v. Rogers Clothing, 114 Wash.2d 23, 229-231, 787 P.2d 39, 48 (Wash. 1990).

- 3. It is not always possible to assess the entire cost of an improvement against the property in a district.
- 4. Formula methods of assessment often produce disproportionate or otherwise unlawful assessments for some parcels.
- 5. The relationship between the city and property owners can become adversarial, particularly at the time of the final assessment roll hearing.

6. The two hearings held in the course of the proceedings are for different and distinct purposes to which they should be limited, and both can be conducted with reasonable decorum.
7. Anticipate possible litigation and make a record adequate for judicial review of both formation and assessment proceedings.
8. Executive sessions during meetings or hearings may serve proper public purposes, preserve confidentiality and protect the interests of the city.
9. All requirements of the applicable statutes and any local procedural ordinances or regulations should be strictly and timely satisfied.
10. The appearance of fairness should be maintained, conflicts of interest should be disclosed and ex parte communications should be avoided.

V. The Importance of Informing the Public and Promoting Confidence

1. Philosophy and perspective

“While we are bound to conclude the actions of the respondent were legally proper when viewed in light of the trial court’s findings, we cannot help but reflect upon the fact that legally proper action may, nevertheless, needlessly cause anger, dismay and antagonism on the part of citizens affected.”

State ex rel. Neuert v. Alderwood Water District, 1 Wn.App. 480, 482, 462 P.2d 948 (1969).

2. Actions to take

- a. Plan and prepare carefully and thoroughly.
- b. Make reasonably full and timely disclosures of important details to the public
- c. Assure that all such information is correct and consistent

3. Potential practical advantages

- a. Fewer questions and less misunderstanding
- b. Reduced opposition and protests
- c. Increased credibility and acceptance

4. Conclusion

Procedure for establishment of local improvement districts and determination of special assessments is well defined. Although there are potential traps for the unwary, careful reading and compliance with the detailed statutory provisions provide adequate protection for property owners. Ample provision is made for participation and protests by those affected. On the other hand, the procedure enables the city to proceed with necessary improvements in an expeditious manner.

Trautman, Supra, at 132

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CHECKLIST/OUTLINE OF LOCAL IMPROVEMENT DISTRICT
PROCEDURES IN WASHINGTON CITIES

For transcript documents,
each copy of such document should be certified as a true
and complete copy by the official custodian of the original.

The assistance of an engineer (either an independent consultant or the city engineer), a financial advisor or investment banker, the city attorney, bond counsel and other professionals, including an environmental lawyer and an appraiser, as appropriate, should be secured at the outset to assure that each procedural requirement is timely met and that the council or commission has the information and advice needed to make the necessary decisions.

INITIAL STEPS UNDER PETITION METHOD OF FORMATION

- Filing of a petition signed by owners of property aggregating a majority of the area of the proposed Local Improvement District (LID). RCW 35.43.120.

Property owners' petition with all signatures.

- Certification of sufficiency of petition by the designated officer. RCW 35.43.130.

Engineer's certificate of sufficiency of petition.

- Designated person prepares cost estimate, assembles other statutorily required information and certifies it to the council. RCW 35.43.130.

STEPS UNDER BOTH RESOLUTION AND PETITION
METHODS OF FORMATION

1. Determine whether LID formation is categorically exempt from procedures of State Environmental Policy Act (SEPA), Chapter 43.21C RCW and Chapter 197-11 WAC. If not categorically exempt, prepare and issue Environmental Checklist and Determination of Non-Significance (DNS) (or Environmental Impact Statement (EIS)) before adopting ordinance creating LID and ordering improvements.

Environmental Checklist and DNS (or EIS).

2. Adopt resolution declaring intention to form LID, or in response to petition, adopt resolution fixing hearing on forming LID. Resolution provides for hearing on formation whether petition or resolution method is used. RCW 35.43.130-.150; 35.43.125.

a. Resolution.

b. Minutes (or excerpts) of council meeting reflecting adoption of such resolution.

3. If resolution method is being used, designated person prepares cost estimate, assembles other statutorily required information and certifies it to the council. RCW 35.43.130.
4. Mail notice of hearing at least 15 days before the date fixed for hearing to the owners as shown on the rolls of the County Assessor of all property (a) within the proposed LID and (b) outside of the proposed LID, when such property is required at the time of notice to be connected to the proposed sewer or water facilities as a condition of Federal Housing Administration loan qualification. RCW 35.43.150; 35.43.270. If state-owned property will be assessed, notice must be given by registered or certified mail at least 30 days prior to hearing. RCW 79.44.040.

Affidavit of mailing with form of notices attached.

5. Publish resolution declaring intention or resolution fixing hearing on forming LID in at least two consecutive issues of the official newspaper, the first publication being at least 15 days prior to the hearing. RCW 35.43.140.

Affidavit of publication of both such publications.

6. Conduct hearing on formation of LID. RCW 35.43.140.
 - a. *Minutes of council meeting, committee meeting, or proceedings before hearing officer reflecting such hearing, including recommendation of committee or hearing officer.*
 - b. *Resolution designating hearing examiner or committee, if authorized.*

7. Pass ordinance creating LID and ordering the improvement. RCW 35.43.070.

- a. *Ordinance creating LID.*
- b. *Minutes (or excerpts) of council meeting showing passage of such ordinance.*

8. If SEPA review required for LID formation, give official notice of the date and place for commencing an appeal under SEPA. RCW 43.21C.075(5), 43.21C.080; WAC 197-11-680(5).

Official notice.

9. Publish ordinance creating LID in official newspaper.

Affidavit of publication of formation ordinance.

10. Within 15 days after creation of LID, file ordinance creating LID, boundary diagram of LID and preliminary assessment roll with City Treasurer (sometimes referred to as Finance Director). Thereafter, City Treasurer should immediately post the proposed assessment roll upon his or her index of local improvement assessments. RCW 35.50.005.

11. If LID contains "farm and agricultural land" or "timber land" as defined in RCW 84.34.310, file notice of formation of LID with County Assessor and county legislative body. RCW 84.34.320.

- a. *If LID does not contain such farm and agricultural land or timber land, a certificate from the County Assessor to that effect; or*

- b. *If LID does contain such farm and agricultural land or timber land, a certificate or receipt of filing such notice.*
12. County Assessor shall mail notice of formation of LID to owners of "farm and agricultural land" or "timber land," as defined in RCW 84.34.310. RCW 84.34.320.
- Certificate or other evidence of mailing such notice.*
13. Expiration of protest period for LID formed by resolution method 30 days following passage of ordinance forming LID. RCW 35.43.180.
- Clerk's or engineer's certificate of maximum percentage of protest during that period.*
14. Expiration of time limitation on litigation. No lawsuit may be maintained challenging formation of the LID if not filed within 30 days after passage of the formation ordinance (if initiated by petition) or after expiration of the 30-day protest period (if initiated by resolution). RCW 35.43.100.
15. Authorize final design work.
16. If required, authorize and publish call for bids for construction. RCW 35.22.620, 35.23.352, 35A.40.210, 35.43.190.
- Affidavit of publication of bid call.*
17. If required, post call for bids. RCW 35.22.620, 35.23.352, 35A.40.210.
- Affidavit or certificate of posting of bid call.*
18. Receive bids.
19. Engineer furnishes analysis of bids.
- All bids received and engineer's tabulation.*
20. Accept best bid and award contract.
- Minutes (or excerpts) of council meeting showing action on bids.*
21. Authorize sale of interest-bearing warrants drawn on LID fund or short-term financing by means of a line of credit or notes and establish the interest rate or index by ordinance. RCW 35.45.130; ch. 39.50 RCW.
- a. *Ordinance authorizing warrants or notes.*
- b. *Minutes (or excerpts) of council meeting reflecting passage of such ordinance.*
- c. *Affidavit of publication of such ordinance.*
- d. *"Take out" commitment.*
- e. *Preliminary warrant or note opinion.*
- f. *Other transcript documents, if required as the basis for such legal opinion.*

22. Periodically issue such interest-bearing warrants, if any, drawn on LID fund to cover costs of improvement, as incurred.

Individual warrant opinions, if any, and supporting vouchers.

23. On completion of project, obtain necessary state clearances, accept work and determine total cost. RCW 35.44.020, 60.28.040 (Dept. of Revenue), 51.12.050 (Dept. of Labor and Industries).

24. Direct engineer to prepare final assessment roll and file it with clerk.

25. Adopt resolution or motion setting time, date and place of assessment roll hearing. RCW 35.44.070.

- a. *Resolution, if any.*

- b. *Minutes (or excerpts) of council meeting reflecting adoption of such resolution or motion.*

26. Mail notice of hearing to the owners of all property listed on the assessment roll as those owners' names appear on the records of the County Treasurer at least 15 days before date fixed for hearing. RCW 35.44.090.

Affidavit or certificate of mailing with copy of notice attached.

27. Publish notice of hearing at least once a week for two consecutive weeks in the official newspaper, the last publication being at least 15 days before the hearing date. RCW 35.44.090.

Affidavit of such publication.

28. Conduct final assessment roll hearing, considering objections and overruling them or modifying assessments. RCW 35.55.070, 35.44.100.

- a. *Minutes of council meeting, committee meeting, or proceedings before hearing officer reflecting such hearing, including recommendation of committee or hearing officer.*

- b. *Resolution designating hearing examiner or committee, if authorized.*

29. If any assessments are increased, set a new hearing and publish and mail notice to those properties with increased assessments in the same manner as for the original assessment roll hearing. RCW 35.44.120.

30. Pass ordinance confirming and levying assessments as finally approved. RCW 35.44.100.

- a. *Ordinance confirming assessment roll.*

- b. *Minutes (or excerpts) of council meeting showing passage of such ordinance.*

31. Publish ordinance confirming assessments.

Affidavit of such publication.

32. In LID containing any "farm and agricultural land" or "timber land" as defined in RCW 84.34.310, file notice with County Assessor, County legislative authority and City Treasurer of adoption and confirmation of final assessment roll. RCW 84.34.320.
- a. *Certificate or receipt of the filing of such notice.*
 - b. *Certified copies of any waivers of assessment exemptions given pursuant to RCW 84.34.320.*
33. Appeal period expires 10 days after the ordinance confirming assessment roll becomes effective. RCW 35.44.190-.210.
34. City Treasurer publishes in the official newspaper once a week for two consecutive weeks, and (within 15 days after the first such publication) mails to all property owners, notice that roll is filed for collection. RCW 35.49.010.
- a. *Affidavit of such publications.*
 - b. *Affidavit or certificate of such mailing with notice attached.*
35. Prepayment period expires 30 days after first publication of Treasurer's notice. RCW 35.49.010; 35.49.050.
- Treasurer's certification of amount of prepayment and balance of unpaid assessments.*
36. Sell bonds after expiration of prepayment period (bonds to be dated and delivered no earlier than 20 days after conclusion of prepayment period) at public or private sale. RCW 35.45.010; 35.45.040.
- A. Public Sale
 - (1) Contact financial consultant.
 - (2) Pass and publish bond ordinance authorizing sale.
 - a. *Ordinance.*
 - b. *Minutes (or excerpts) of council meeting reflecting passage of such ordinance.*
 - c. *Affidavit of publication of such ordinance.*
 - (3) Publish notice of sale.

Affidavit of publication of notice of sale.
 - (4) Review bids and accept best bid.
 - a. *All bids received and tabulation.*
 - b. *Minutes (or excerpts) of council meeting showing action on the bids received.*
 - B. Private Sale
 - (1) Contact investment banker.
 - (2) Receive proposal(s) for bonds and accept or reject.
 - a. *Proposal accepted.*
 - b. *Minutes (or excerpts) of council meeting reflecting acceptance of same.*

- (3) Pass and publish bond ordinance.
 - a. *Minutes (or excerpts) of council meeting reflecting passage of same.*
 - b. *Affidavit of publication of such ordinance.*

- 37. Pass and publish guaranty fund ordinance if none exists.
 - a. *Ordinance.*
 - b. *Minutes (or excerpts) of council meeting reflecting passage of such ordinance.*
 - c. *Affidavit of publication of such ordinance.*

- 38. Use prepaid assessments to redeem outstanding LID fund warrants or short-term financing.

- 39. Deliver bonds, no earlier than 20 days after conclusion of prepayment period, either in exchange for remaining outstanding warrants or for cash sufficient to redeem such warrants or financing.
 - a. *Preliminary official statement.*
 - b. *Official statement.*
 - c. *Closing certificate.*
 - d. *Certificates of manual signature and mailing.*
 - e. *Signature identification certificate.*
 - f. *Tax exemption and nonarbitrage certificate.*
 - g. *Internal Revenue Service Form 8038-G.*
 - h. *Specimen bond.*
 - i. *Certificate of bond registrar.*
 - j. *Receipt for Bonds and Receipt for Payment.*
 - k. *Approving legal opinion and reliance letter.*
 - l. *BAN transcript, if applicable.*
 - m. *State Bond Report Form*

Chapter 3 Procedures

Introduction/Flow Chart

As noted in Chapter 1, LIDs are not the most complicated thing in the world, but they do require attention to detail and processes. The narrative in this Chapter 3 is intended to “flesh out” the Legal Summary in Chapter 2. Your LID administrator will want to make a copy of the Checklist/Outline in Chapter 2 and/or other resources in the online appendices. Some of us (engineers mostly) may find the LID flow chart, based on Chapters 35.43 through 35.56, on the following pages useful.

Pre-Formation Activities

An LID may originate with an inquiry from a citizen asking about improvements in his/her neighborhood. Or an LID may be considered by an agency as a source of funding for a project in the capital improvement program. An LID may be looked to as a method to mitigate impacts of a proposed development and distribute costs equitably to other landowners benefitting from the improvements in the development. Whatever the reason for an LID, the agency’s LID administrator (which may vary by project) and public works staff must review the proposed project to determine if it is practical or feasible and whether it lends itself to financing through an LID. To determine preliminarily whether an LID is feasible, the LID administrator and public works staff often should consult with a *civil engineer*, as well as experts in *finance, law, and land value*.

After a project is found to be feasible, a typical first step by the LID Administrator is to determine the extent of landowner support for the project. One cost effective method of making this determination is for the Administrator to prepare a fact sheet and informal petition (**not to be confused with a formal petition for LID formation per the statutes**) for circulation by the project proponent(s).

This informal petition should describe the nature of the project, the extent of the proposed improvements, the district boundaries, the method of payment, and the length of time of the payments (amortization period). Frequently, it is not economical to provide “up front” cost information, but if possible, a project cost estimate should be included on the petition. However, avoid providing estimated costs whenever there is a reasonable possibility that the costs will be too low or whenever the proposed project may not occur for an extended period of time. Failing to provide costs will not be a popular choice; however, the escalation of costs over time usually will make this the correct choice. Grant funds and city and/or developer contributions to the proposed project should be identified as early as possible, as these contributions will reduce assessments to properties in the LID.

Practice Tip

Usually it is unwise to provide *individual* cost information at this point of development of an LID. This is especially true where a detailed engineering design, environmental reviews, and a financial report have not been completed; when the formula or type of method (front foot, square foot, special benefit, etc.) for cost distribution has not been determined; when a more complex cost distribution formula or method will be used (such as zone-termini); or when a combination of methods will be used. It is not necessary to include an individual breakdown of costs on the petition, because the petition is principally used to measure the desire for the improvement in the proposed LID area.

The LID administrator and relevant experts should meet with small groups of property owners to explain the LID process and the proposed project. If the owners of a substantial majority of the area of affected properties sign the informal petition, and if the petition represents a *substantial majority* of the probable total assessments, an LID formation attempt will likely succeed. If not, it is a good idea to solicit more signatures before proceeding or ascertain support through more informal meetings.

Tracking costs (of both in-house staff and outside consultants) should begin as soon as the project seems to be feasible, because costs incurred before formation of the LID may be reimbursed by the LID. There are occasions when an agency, usually a small city, will require that LID proponents pay for all or part of the LID formation costs. The proponents in this type of up front funding are usually a few large property owners who are more interested in development than solving problems.

Practice Tip

Because the proponents have paid money to form the LID, they will assume that they have unbridled access to staff, the LID administrator and the design team. In addition they will expect their special interests to be met. In this case, it is suggested that a detailed agreement be made between the proponents and the Agency as to how the proponents' participation and suggestions are to be considered, and then be prepared for plenty of interference.

Formation Process

Applicable Statutes

As explained in Chapter 1, the LID process for cities and towns is extensive and detailed. The LID process for other municipalities, such as water-sewer districts and port districts, is based on the process for cities and towns, with some procedural variations. This chapter describes the LID process for cities and towns. The LID administrator must review carefully the LID statutes for the type municipality involved, and compare it to this chapter.

Cost Estimates and Preliminary Assessment Roll

In preparation for the LID formation hearing, more detailed cost estimates must be made. This should be done by the project engineer *and* the LID administration team. The clerk-treasurer or finance director and an investment banker are usually necessary to assist in compiling all of the

estimated costs, such as publication fees , interim finance interest, financing fees, bond printing, and other relevant expenses. See RCW 35.44.020 and Chapter 4.

Practice Tip _____

Following is a list of costs that may be included in the costs of an LID. At the time of LID formation these costs will not be known in detail.

Pre-Formation

- Preliminary engineering
- Comprehensive utility (or some portion) plan
- Engineering report
- Funding applications
- Preliminary special benefit analysis
- Agency administration
- Legal costs

LID Costs

- LID management (public meetings, mailings, etc.)
- Special benefit analysis
- Preparation of preliminary assessment roll
- Preparation of final assessment roll
- Developer extension contracts in lid (RCW 35.91.050)
- City costs (ads, miscellaneous supplies)
- Hearing officer, court reporter
- Legal fees
- Legal defense and future legal fees

Design

- Design engineering
- Environmental/permitting/cultural resources
- Surveying and geotechnical
- Right of way acquisition
- Agency costs, direct costs and (staff time for work related to project)

Construction Phase

- Construction administration
- Construction inspection
- Construction surveys
- Construction testing
- Agency administration

Financing

- Interim financing interest during design and construction
- Permanent financing
- Lid guarantee fund

Environmental Review

Allow adequate time prior to the engineering cost estimate completion for required environmental reviews (SEPA and NEPA, if applicable). It is highly desirable to complete environmental reviews before adoption of the LID formation ordinance. The environmental review *must* be completed before awarding the construction contract for the project.

Special Issue Properties

If any of the lands within the proposed project area might have been designated as farm and agricultural or timber land, pursuant to Chapter 84.34 RCW, and the LID project is for water, sewer or roads, be sure to submit a request to the county assessor, along with a map showing the county tax lots, to determine the existence of such lands. Property designated as farm, agricultural or timber land may be assessed, but such assessments may not be collectable until the use changes or the designation is removed, which might not occur for many years. Removal of the designation makes the assessment payable immediately, in full with interest.

In addition to such land, Federal and Indian Trust Lands are non-assessable and a few other special purpose lands also may be non-assessable or subject to the delayed payment of assessments. When a municipality is working with its legal counsel and/or special legal counsel (bond counsel) and its financial advisor, issues arising from federal, reservation, housing authority, open space, and other potentially non-assessable or slow payment properties sometimes can be resolved, but they should be identified and addressed promptly to determine their financial impact on the viability of the project.

Assessments

As noted in previous chapters, the LID statutes require that the cost and expense of the LID project be assessed to all property that has received special *benefit* from the LID project. Special benefit is the difference in the fair market value of the property without the improvement and the fair market value of the property with the improvement (commonly called “before and after,” more properly called “without and with”).

LID assessments must meet two special benefit tests:

- The first is that an LID assessment cannot exceed the special benefit.
- The second is that LID assessments must be proportional to the special benefit derived.

A number of different formula and methods, separately or in combination, can be used to distribute cost and expense to meet the special benefit test. It should also be noted that an LID may have a number of special benefit districts each using a different assessment method within the LID. See RCW 35.43.050. If there is doubt whether certain properties can meet the above special benefit tests, a special benefit analysis should be prepared for these marginal properties.

Major projects, such as arterial street improvements, interstate highway interchange accesses, rapid transit terminals, and trunk sewer mains, may substantially influence the intensity of use and value of property and present interesting LID boundary problems. An economic feasibility study and LID boundary recommendation is often completed for a major project. The feasibility study may be expanded later in the LID process into a complete special benefit study if desired.

Once calculated by one of the formula or methods described in Chapter 5, a preliminary assessment roll is generated. The preliminary assessment roll should identify, at a minimum: each property owner's name and mailing address (from the county assessor's records); the LID parcel number or property address; the county tax lot number; the basis of calculation; and the estimated total assessment per parcel.

Practice Tip

At this point, the LID administration team should review and compare the individual and categorized (residential, commercial, etc.) assessments.

If the preliminary assessments appear to be excessively high, the LID administration team should hold more informal meetings to gauge support.

The LID administration team also should take a poll of property owners by sending a letter to each of them, which letter should include the estimated individual assessment; request a response to the project; and include a stamped, self-addressed postcard for return, indicating "in favor," "opposed," or "undecided," in light of fully developed cost estimate.

Based on the response that is received, the LID administration team should calculate the protest percentages in the same manner as for the preliminary hearing (based on estimated assessments).

If the project has adequate support, continue with preliminary LID activities. If the project no longer has substantial support, report to the appropriate administrative staff and the city council or legislative body, recommending that no further work be done. Or, encourage the project proponents to do more marketing.

In addition to the preliminary assessment roll, a preliminary assessment map is drawn showing the properties that are assessed (benefit area). The dollar amount of the estimated preliminary assessment against each property may be placed on the map as a helpful visual aid.

The person or board designated by charter or ordinance to make the preliminary estimates and assessment roll shall cause an estimate to be made of the cost and expense of the proposed improvement, and shall certify it to the city council, together with other papers and information stated in RCW 35.43.130. The estimate shall be filed after the filing of a petition to form an LID (petition method of LID formation), or concurrently with the adoption of the resolution of intention to form an LID (resolution method of LID formation), as the case may be.

Resolution of Intention

For an LID that is not initiated by a formal petition of property owners, the city council adopts a resolution declaring its intention to order the LID improvement and set the date for a formation hearing on the proposed LID. (RCW 35.43.140) Unless the resolution of intention is a standard form previously approved by bond counsel, the resolution should either be prepared by, or be reviewed and approved by, bond counsel.

For some agencies, the Resolution of Intention must be passed by the council/commission before pre-assessment work is performed in order to obtain interim financing.

A bond counsel is a specialized attorney who will provide official legal opinions regarding financing issues (interim and permanent), and LID bond and note issuance, and support/assistance on the LID in general, if requested. Such support and assistance may include review or preparation of petitions, resolutions, ordinances, notices, arbitrage certificates, and the bond or note closing documents. Generally, bond counsel will want to be involved very early in the project so that they are comfortable that the LID has been properly created and carried out.

The city clerk publishes the resolution in two consecutive issues of the official newspaper. The first publication must be at least 15 days before the hearing date. There are time restraints on publication as set forth in RCW 35.43.150.

Formation Hearing Notices

RCW 35.43.150 also requires that notice be given by mail at least 15 days prior to the date fixed for the hearing to all owners of properties within the LID that are specially benefitted. It is not unusual for the formation hearing notices to be sent three weeks, or more, ahead of the hearing date. The notice should be prepared by, or reviewed and approved by, bond counsel.

With regard to sanitary sewers and potable water facilities, RCW 35.43.270 requires under some circumstances that notice be given to the owners of property that lies outside of the proposed LID and that may want to connect someday to the proposed new facilities. Staff should meet with such property owners and explain why their property has been excluded from the proposed LID and whether they might be included within a future project, as well as advantages and disadvantages of not being included in the LID.

The owners of property lying outside of the proposed LID, and any persons in the community as a whole, should be allowed to speak at the formation hearing, perhaps at a portion of the hearing set aside for their testimony, separate from the testimony of property owners participating in the proposed LID.

Formation Hearing Notice

The most important step in the LID formation process is to provide notification to property owners within the proposed LID. The hearing notice must describe the project and give the estimated cost of the project, as well as the individual estimated benefits (assessment) to the parcel. The notices must be mailed to the current taxpayer as shown on the county assessor's records. (RCW 35.43.150) When undelivered notices are returned, keep the original return envelope and notice with official records for the project. A certificate of mailing of the notice of the LID formation hearing should be filed with the official record on the project at the time the notices are mailed. Bond counsel will prepare, or assist in preparing, this certificate.

Although statutory notice requirements are met by publication of the resolution and mailing of notices to the property owners on the county assessor's records, it is recommended that additional hearing notices be sent to all parties known to the city as having a legal interest in the assessed properties through real property documents such as easements and deeds of trust.

Reasonable research should be performed to find the address of the property owner where the county tax notice is sent to a mortgage company and whenever a notice of hearing is returned. Sources that are often used to locate the property owner are the telephone book, reverse directory, and the utility billing department of the city.

Practice Tip _____

Often times it is advisable to send the notice to all of the addresses that may be known for the property owner and not just the official mailing address.

Informal meetings with property owners which are held prior to the formation hearing will be useful not just for explaining the process and project, but also for seeking further information regarding addresses of neighboring owners. Further, any notices of earlier meetings will identify problems before the formal notices are mailed for the LID formation hearing. All special efforts made to notify property owners should be made part of the public record at the formation hearing.

Practice Tip _____

If Washington State property is located within the LID and is to be assessed, notices must be handled differently than other property (see Chapter 79.44 RCW).

Formation Hearing

An ordinance forming the LID may be prepared by, and should be reviewed and approved by, bond counsel. Under the LID statutes, the city council may pass the ordinance at the same meeting as the holding of the formation hearing.

It is recommended that a hearing display map be prepared using a copy of the assessment map, with property owners' names and estimated final assessments shown on the individual properties. The formation of an LID may be appealed to the Superior Court. Consequently, the city should electronically record the formation hearing, and all discussion relating to the proposed LID. The Superior Court usually will require an audio only tape recording to be transcribed. An audio and visual tape recording (television) may not need to be transcribed. Thus, if the LID is highly controversial, or a significant number of property owners is expected to testify in opposition to the LID, the LID administration team may want to consider having a court reporter record the formation hearing.

The LID formation hearing should have a structured format that is more formal than a normal city council meeting or hearing. It is recommended that legal counsel, bond counsel or special counsel and the LID administrator meet with the mayor of the city before the hearing to discuss the agenda for and recommendations regarding the hearing. By LID statute, the formation hearing may be held before a committee of the council, or the council may designate an officer, such as the city hearing examiner, to conduct the hearing and make a recommendation to the full city council. (RCW 35.43.140)

Practice Tip

A workshop with the entire city council, held well ahead of the formation hearing, will be helpful to facilitate a smooth and organized hearing.

At the formation hearing, the LID administrator and LID team should present the details of the project proposal, the estimated costs, the portion of the LID costs paid for by the city (if any), the individual preliminary assessments, and a summary of letters of support and/or opposition that were received after notice of the hearing was published and mailed. Engineering aspects of the LID project, such as project cost, design elements, and usefulness of the improvements, also should be addressed, as well as the practical and financial benefits of the project, project support, and project amortizing. Remember that LIDs are legal and financial tools, and not engineering tools.

Practice Tip

When an LID project is large or complex and potentially controversial, it is often advisable to regularly publish a project newsletter. The newsletter will provide accurate and up to date information regarding project progress including changes, schedules, and major cost and funding developments. It is also advisable to have a website with the latest information and archived copies of the newsletter.

After all of the owners who have submitted written protests have had an opportunity to be heard and staff has had an opportunity to answer questions, the city council must decide whether or not to create the LID. A majority of the members of the city council must pass the ordinance creating the LID.

Protest and Appeal Periods – Filing of Information

Within 15 days after the legislative body has passed the ordinance creating the LID, the LID administrator (or representative) must file with the city treasurer the title of the improvements, the LID number, a copy of the diagram or print showing the boundaries of the LID (preliminary assessment roll map), and the preliminary assessment roll or abstract of same showing thereon the lots, tracts, or parcels of land. (RCW 35.50.005) The treasurer then immediately posts the preliminary assessment roll on the index of local improvement assessments against the properties affected by the local improvement.

For an LID initiated by city council resolution (and not by formal petition), RCW 35.43.180 provides for a 30-day protest period after the passage of the ordinance creating the LID. If written protests amounting to 60 percent or more of the dollar amount of preliminary assessments within the LID are filed during the 30-day protest period, the city is divested of authority to proceed with the LID. If the proposed improvement is a sewer or water main and if the city council finds that the local improvement is necessary for the protection of the public health and safety then, if all of the city council members present vote in favor of the ordinance, then the LID may be formed regardless of the amount of property owner protest. (RCW 35.43.170)

Practice Tip _____

Even though many types of municipalities use the city LID statutes and procedures as set forth in Title 35 RCW, protest rules vary for various municipalities.

Care must be taken in the calculation of protest percentages. The following format for calculations is suggested:

Total Assessment under Lid = Amount A

Less assessments to properties in which a development agreement, annexation agreement or approval conditions requires participation in the LID.

Less assessment to properties which are owned by a local or state government. *(Note: Check with bond counsel and the city attorney or special legal counsel before deducting these assessments to verify whether assessments for specific properties are to be deducted.)*

Less assessments to properties which are owned by people who are being assisted by the local government in proportion to the amount of such assistance. *(Note: Check with bond counsel and the city attorney or special legal counsel before deducting these assessments to verify whether assessments for specific properties are to be deducted.)*

Net Assessment = Amount B

Assessment represented by those property owners who file written protests within the 30 days protest period = Amount C.

Amount C divided by Amount B and expressed as a percentage is the protest percentage. If it exceeds 60 percent, the city is divested of its authority to proceed with the LID.

There is an appeal to Superior Court from the ordinance creating the LID:

“No lawsuit may be maintained challenging the jurisdiction of the council to proceed with the improvement and create the local improvement district unless that lawsuit is served and filed no later than 30 days after the date of passage of the ordinance ordering the improvement and creating the district, or when applicable, no later than 30 days after the expiration of the 30-day protest period provided in RCW 45.43.180 in LIDs initiated by resolution of intent.” (RCW 35.43.100)

Design, Construction, and Interim Financing

Following the protest and appeal periods, the engineers finalize the design of the project, obtain the necessary permits and acquire necessary rights-of-way for the project. The project is constructed pursuant to invitation to bid or pursuant to quotations for bid (small works roster), under applicable statutes.

Generally, LID improvement construction responsibilities are the same as for other municipal capital projects. If during the design process, the bid process, or the right-of-way acquisition

process, it appears that assessments will significantly increase, then all property owners should be notified of the increase. While not a formal requirement, a 10 percent or more increase in the cost should trigger special informational meetings.

Once the contractor has been selected and the contract documents executed, interim financing usually is required, by inter-fund loan or formal borrowing (notes and warrants). Sometimes it may be necessary to obtain interim financing earlier, such as when consulting engineers are used to perform preliminary design or facilitate informational meetings. It may also be necessary to obtain interim financing for a special benefit study or right-of-way acquisition. For these reasons, many cities will begin the interim financing process once the protest/appeal period has expired.

Alternatives for the city to obtain interim financing for the project include internal financing, issuing warrants or issuing notes. There are other alternatives that can be utilized. Provisions for the method of interim financing may be incorporated into the ordinance creating the LID, or may be provided for by separate ordinance.

Recommendations for financing alternatives are usually made by the finance department, often with the assistance of an investment banker and/or bond counsel. Factors such as interest cost, term, flexibility and Internal Revenue Service regulations (taxable/tax exempt) are analyzed as part of the determination. If the city elects to seek outside financing, a financial statement is prepared which describes the project, the cost, the security for repayment and other relevant factors important to a financial institution. Often the statement is prepared by the finance department, but it is sometimes prepared by the LID administrator or investment banker.

During the warrant process, once the financial statement has been approved by the city's legal and financial officials, it is sent to the banks. Although the banks may be asked to respond within seven days and make a bid on the interest to be charged to loan the money for interim financing, it is better to allow two to four weeks.

An alternative to warrants are bond anticipation notes (BANs), which are actually short-term notes, since all needed funds are obtained at the time the notes are issued, while warrants provide funds as project costs are incurred. Most BAN financial statements are prepared by the investment banker. BANs are different than warrants. The LID team should meet with an investment banker to discuss and become familiar with the advantages and disadvantages of both methods of financing.

As stated earlier, it is both wise and prudent for a city to consult with an investment banker and bond counsel in the formative stages of the LID to assure that financing can be secured for the proposed project, because not all projects can be financed. An investment banker will be able to provide early information concerning interest and other costs for interim or long term financing. Financing costs need to be included and considered in the estimated project costs.

Interim financing may be obtained through a negotiated sale or a public sale where a call for bids is used. Both methods are used extensively by municipalities in Washington.

LID Closeout Process

The LID closeout process begins when construction is completed and all the bills and costs are submitted. At this time, total project costs must be established, including contract administration,

engineering, inspection, record (as-built) drafting, legal, and financing. (RCW 35.44.020) Some frequently overlooked cost items are interest on borrowed money, bond counsel fees, bond printing, discounting sale of bonds, and bond registration.

To calculate the actual interest on interim financing, it is necessary to determine the date of the LID bond sale (issue date) if an interim warrant was used. If BAN financing is used, there is probably a fixed maturity date with a known interest cost.

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. It may be possible to reduce financial, legal and administrative costs by combining the financing of several LIDs into a consolidated bond issue known as a CLID (consolidated local improvement district). RCW 35.45.160.

Once the final LID costs have been ascertained, they are 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 analysis will need to be completed well in advance, in order to prepare the final roll, because the special benefit analysis can be a lengthy and very detailed process. The LID administrator should arrange several special meetings for the special benefit appraiser to meet with small groups of property owners to explain how the special benefit process works. These meetings should occur a month or more before the final assessment roll hearing to allow property owner concerns to be properly addressed.

Unlike the preliminary assessment roll, where cities use the county assessor's records, the "ownerships" for the final assessment roll must be determined from the county *treasurer's* records. The state law in this area is expected to be changed to read *assessor's* records for both sets of notices. Until the law is changed, take care not to interchange them. In many counties, the assessor and treasurer share a common database, so that the information is identical. It is a good idea to request a letter to that effect from the assessor or treasurer for LID files.

Final Assessment Roll and Hearing

Once the final assessment maps and rolls are completed, the date of the final hearing on the assessment roll is set. Often the date is set by resolution, but one is not required by state law. The date, therefore, may be fixed by city council motion. The assessment roll, together with the resolution (when applicable), is filed with the clerk.

The hearing notice, specifying the time and place, is mailed by the clerk, and must state that objections must be made in writing and filed with the clerk on or before the hearing date. The city council will consider the objections and correct or revise the roll, voting on an ordinance confirming the roll. (RCW 35.44.080) Bond counsel should either prepare, or review and approve, the notice.

The 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. It is advisable to mail duplicate notices

to any parties known to hold an ownership interest in the property, as was done on the preliminary assessment roll.

Next, the clerk arranges for the notice to be published at least once a week for two consecutive weeks in the official newspaper, if it is a daily paper. If the official paper is weekly, seek advice from bond counsel as to publication requirements. The last publication must be at least 15 days before the date fixed for the hearing. RCW 35.44.090.

Practice Tip

Publication requirements for LID formation (RCW 35.43.140) are not the same as the notice requirements for the ordinance confirming the final assessment roll (RCW 35.44.090).

A new request is made to the county assessor to determine if any of the lands within the LID project area have been designated as farm and agricultural and timber land, pursuant to Chapter 84.34 RCW. This should be done by mailing another letter to the assessor along with a map showing the county tax lots, requesting a written response.

The assessment roll hearing is “quasi-judicial” in nature, and property owners may appeal their final assessment to Superior Court. Regardless of the type of recording, it is highly recommended that the hearing also is recorded by a court reporter. If you believe that a court reporter is not needed, consult first with your city attorney or special LID counsel to make sure they agree with you. The court reporter’s recording does not need to be transcribed unless an appeal is filed. Typically, property owners will indicate early in the LID process whether an appeal is likely.

The assessment roll hearing should be structured. Again, because the hearing is “quasi-judicial” in nature, a structured hearing format is more important than at the formation hearing. It is helpful to hold one or more procedure/hearing structure workshops prior to the formal hearing with the city council, city attorney, bond counsel and/or special counsel to establish a structured hearing format. Reduced risks to the city from a structured format are worth the effort.

At the assessment roll hearing, the LID administrator gives a report explaining the project. This report should include the total final cost, any public money paid or to be paid toward the LID costs, and a statement that all the proceedings were proper and in conformance with LID statutes, particularly that proper notice has been given. Questions from the city council are responded to by the LID administrator or other staff. If a property owner desires to file an appeal from the final assessment, the property owner must file a written objection/protest before or at the hearing. The protesting property owner should be allowed to testify at the hearing. (RCW 35.44.190)

When property owners protest their final assessment, they should question the amount of benefit that the property will receive from the improvement. In other words, the property owner should argue that the final assessment is greater than the special benefit resulting to the property from the LID improvement. The city is entitled to a presumption of special benefit exceeding the final assessment, and unless this presumption is nullified by expert testimony, such as an appraisal of a qualified MAI appraiser, the presumption should withstand attack. If a property owner has submitted an expert appraiser opinion rebutting the city’s presumption, the city must counter with its own expert opinion substantiating the special benefits of the LID improvement to that property. To accomplish this, planning and timing are critical. Extensive preparation may be

necessary in order to avoid delaying the hearing. Once the city presents information in the form of an appraisal opinion, it is then a matter of decision by the city council as to which opinion of special benefit should prevail.

The city council has authority to revise or amend the proposed final assessment roll as it sees fit. (RCW 35.44.100) However, if any assessment is raised or if there is a need to include an omitted property not previously on the roll, the property owners are entitled to new notice and a new hearing 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. (RCW 35.44.120)

Downward adjustment to any of the final 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 reassessing the remaining property owners in the LID, which would require a new hearing and additional costs, including additional interest and notification costs.

The entire city council makes the final determination without taking additional testimony. Variations of the assessment roll confirmation hearing process, such as using a hearing examiner or city council committee, should only be done after consulting with legal counsel. The assessment roll is approved by the majority of the city council by ordinance. As with the formation ordinance, the assessment roll ordinance should be prepared by, or reviewed and approved by, bond counsel. Procedures for submittal of the confirmation ordinance to the city council should, if possible, allow for final action on the ordinance to occur at the same meeting as and immediately following the assessment roll hearing.

Post Assessment Roll Hearing Actions and Appeals

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 to run. (RCW 35.44.120) During this period, only those property owners who have filed timely written objections to the final roll may appeal to Superior Court. (RCW 35.44.190-270)

Upon expiration of the appeal period, 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. This is called a "pre-pay or interest-free" period. If all property owners pay their assessments during the 30-day interest-free period, no LID bond financing would be needed because there would be no unpaid balance. Typically, there is a balance still owing after the pre-pay period.

If the final cost includes a financing fee (discount fee), any property owner paying all, or any portion, of the assessment during the pre-pay period should be rebated, deducted or forgiven that portion of the assessment that represents the financing fee. The bonds will be sold after the pre-pay period. Since the amount of the financing fee that the city will pay is based on the actual amount of the bond, assessments that are prepaid are not generating any financing fees. The result, then, is a need to treat prepaid assessment differently than amortized assessments. It is appropriate (but not necessary) to provide this information in the pre-pay notice to the property owners.

The Guarantee Fund share for an individual parcel may be eliminated from any the assessment for the Parcel if the assessment is prepaid in full.

Discounting LID bonds is not required but is becoming a popular financing tool to obtain a more marketable bond with an inherent lower interest rate. An investment banker provides advice on the structure, timing, terms, marketing strategy, and other matters. The investment banker assists the city in conducting negotiated sales or competitive sales, including preparing the official statement. The investment banker assists the city with the closing process and the delivery of each bond issue. Cities that intend to use external funding sources to provide interim or long term financing should hire an investment banker.

An underwriter purchases the bonds from the city. In a negotiated sale, the underwriter commonly structures the issue, prepares the official statement, and 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 city, but not both.

Red Flag Issues

The following “red flag issues” should be reviewed and considered for LIDs of every size, so that the LID may proceed more smoothly:

- Proposals for LIDs for the purpose of **converting overhead utility lines to underground lines** should always be handled with caution. Typically, the costs of such conversions are excessive in comparison to the special benefits derived. Even when costs are acceptable, spreading the costs to achieve proportionate special benefit is a problem, especially if the primary reason for the LID is to enhance views. For example, when the overhead lines do not equally affect the views of all the properties, the assessments to individual properties will need to be different; perhaps radically different. Homes with spectacular views out their back windows will likely have very different special benefit than homes with views out their front windows.
- **Parking facility LIDs** need to be approached with caution, using experienced legal counsel and qualified real estate appraisers. The major problem is establishing special benefit.

LIDs that encompass **only a handful of property owners** must be analyzed closely by bond counsel to determine whether the interest earnings on the bonds are taxable. *(Note: LIDs can be done with taxable financing; however, the interest rates will be higher.)*

- On LIDs involving **significant undeveloped property**, two major problems exist. First, the value placed on the properties by the county assessor's office may not be sufficient to provide adequate security, thus preventing marketable financing. Second, investment property is generally high risk property. Timely LID payments are often a problem.
- Some LIDs should be closed (that is, final assessment roll adopted) prior to **actual construction**. Underground wiring, parking facilities, “hard to interim finance” projects (such as significantly undeveloped lands), controversial projects likely to result in significant legal challenges to the final assessment roll, are all examples of LID that

possibly should be close early. The chronological order of this manual does not address the timing of closing an LID prior to actual construction. Consult special counsel and/or bond counsel before proceeding.

- A recommended process is to invite property owners who may be included in an LID to **small, convenient meetings where details of the project can be discussed informally** prior to the formation hearing. A sign-in for all those present is important. At this meeting, the LID administrator should discuss the entire proposal and provide property owners with information regarding the purpose and conduct of the formation hearing. The results of these types of meetings usually are that:
 - Property owners testifying at hearings are better able to give coherent, logical presentations in less time;
 - Property owners are generally less alienated;
 - Property owners favoring the project will more likely appreciate the need for their testimony at the formal formation hearing.
 - Most, if not all, of the major issues will be aired at the meeting.
 - Typically, elected officials desire to have property owner involvement in the process.
 - Informal meetings serve to reduce incorrect and damaging rumors.

When the arguments against a project are known prior to the formation hearing, corrective action, such as redesign or alternatives, can be addressed. Prior knowledge also allows staff to research and/or prepare information for the issues prior the hearing.

At the formation hearing, it is recommended that the actual arguments against the project be presented by staff either in a formal written hearing report or in the staff presentation at the hearing or both. An objective presentation by staff of both sides of the issues will provide the city council with assurance that staff has addressed all the issues and will serve to reduce the impact of the arguments at the hearing.

- A proposal to construct improvements that will specially benefit properties in another jurisdiction, or to extend improvements into another jurisdiction, requires careful consideration. For example, does the jurisdiction that will be selling the bonds desire to encumber its own LID guarantee fund with an outstanding debt that benefits properties outside its boundaries? Is the interlocal agreement adequate to cover all contingencies of the LID process? Who is the lead agency? Special counsel or bond counsel and investment banker must be consulted at the earliest formative stages to answer these questions.
 - Under certain circumstances, cities may assess properties outside of their corporate limits. Counties cannot assess properties inside of cities.
- Often LIDs are only one of a number of recent actions by the city in a neighborhood; for example, there may have been rezones, annexations, block grant actions, etc. Be sure to consider the following:

- These neighborhoods are usually better organized, with more unified ideas on what they want to accomplish. The residents of these neighborhoods are usually more empowered and vocal. Special informal public meetings are essential to provide adequate information to these neighborhoods.
- When several separate complex actions are occurring back-to-back, misconceptions and miscommunications often have occurred already. To reduce problems caused by complex actions, it is recommended:
- The “big picture” (all the proposed actions involved) should be identified for the neighborhood at the earliest possible time;
- The LID administrator must maintain a high profile in the earlier processes in order to respond to LID questions and reduce communication problems. LID administrator attendance at annexation and rezone meetings and hearings is important.
- Several group and individual meetings with neighborhood spokespersons will assist in reducing the spokespersons communication problems when those leaders later canvas the area.
- It is usually desirable for the staff person responsible for the preceding action to attend the informal LID meetings in the early LID formative stage.
- Property owners have not had “10 years of experience” working with the various proposed actions. It is important to take the time necessary to acquaint property owners with the processes that they are facing. This effort will avoid or reduce the fears of property owners to the changes that are proposed. *The time spent may also serve to improve the image of government in general.*
- Property owners involved in back-to-back processes can become frustrated with the length of time involved to obtain what they want. Sharing the LID process information with them early should help them set realistic expectations.
- It is not uncommon for **overzealous LID proponents** to provide inaccurate information to their neighborhood when they are circulating a petition. All parties involved in circulating a petition should be made thoroughly aware of the process and the consequences of giving misinformation.
- When fixing final costs for an LID project where litigation is expected or threatened, it may be desirable to **include the costs of litigating a challenge into the assessment roll**. These costs would include legal fees and additional interest through the anticipated termination of the litigation. If no litigation occurs, the final assessment roll can be reduced.
- It is not unusual for a **city council to be uncomfortable with significant numbers of property owners** testifying against a proposed LID. For example, if 10 property owners testify against a project that has a total of 50 equally assessed property owners, while only a couple owners testify in favor, there can be a perception that the project has very little support. There are at least three rescue techniques. First, the city council needs to have verbal and visual representation of the total percent of protest (colored maps are effective). Second, a reminder to the city council of a recent local landslide election to compare percentages is helpful; particularly if the landslide was a 55 percent to 45

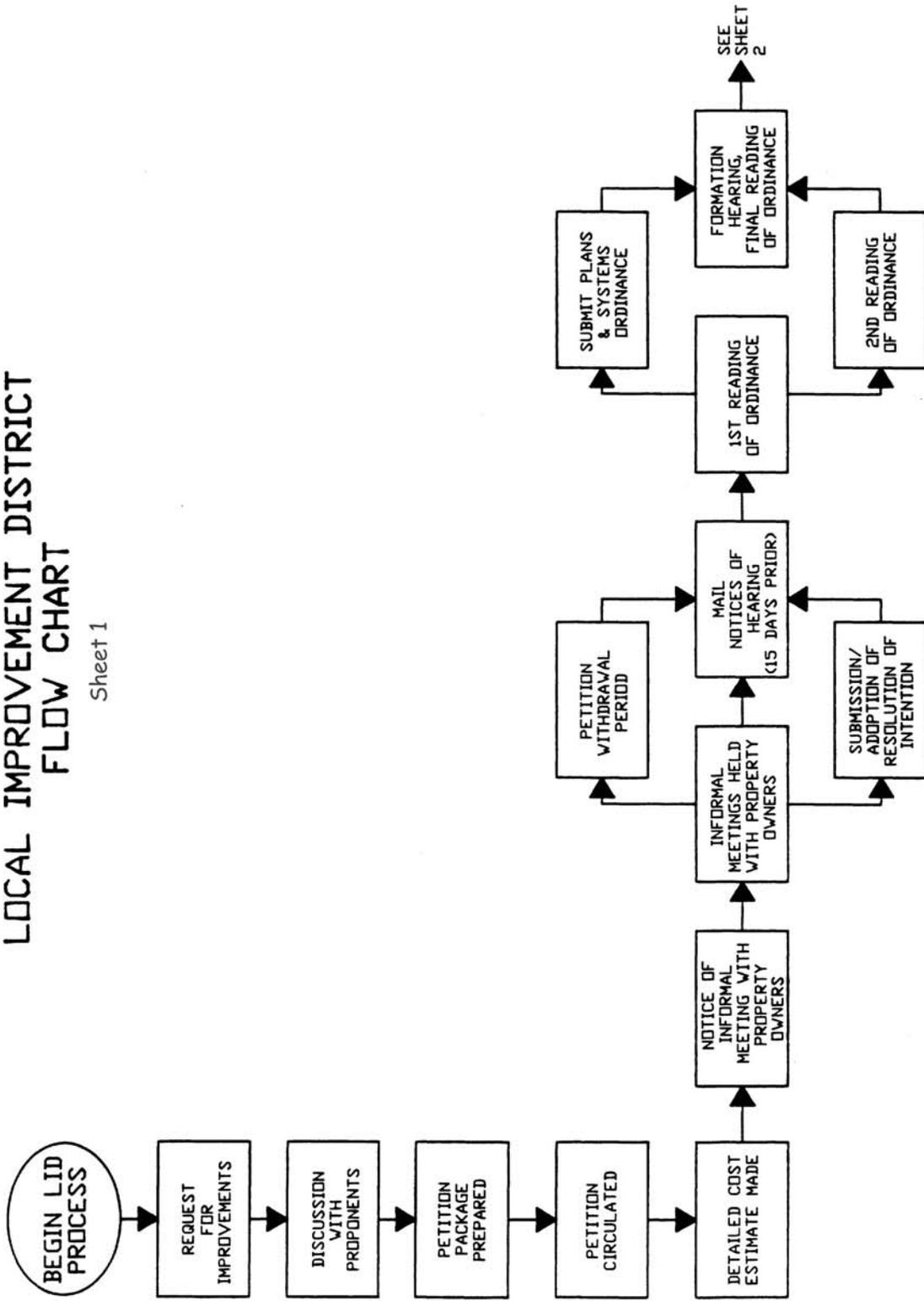
percent type of landslide. Third, during the LID formation process, it is necessary to inform the project proponents that they will need to counter the perception of lack of support by testifying themselves.

- Before holding a public hearing, it is a good idea to prepare **pre-numbered exhibits**. There should be extra copies for the city council or hearings examiner, court reporter, all the city legal representatives and project opponents when appropriate. Also, prepare a list of the exhibits ahead of time. Organizing exhibits during a formal hearing can be extremely disruptive to the flow of the hearing.
- **Set time limits** of presentations at hearings. Check with your legal counsel or bond counsel to determine if special language needs to be put into the notice. *Get concurrence* from your city council well in advance of the hearing.
- **Hold a press workshop** or individual meetings with appropriate reporters before the hearings. Reporters cannot be expected to understand the project simply by attending public hearings. Do a press release. Be as helpful as possible in providing the story that “should be printed”. Give reporters enough background so that they can sort out the truth in the testimony that they *will* hear at the hearing. And, if there is a positive human-interest story – tell the reporter.
- **The cost of the project will likely be at issue**. It is not uncommon to hear circulating rumors, statements and testimony at meetings and hearings suggesting that there is factual evidence that the improvement could have been built at half the cost. This can be a very compelling argument to other property owners, to the city council, or to the media. The project will be well served if staff clearly – and often – conveys that an LID is *not* a method to *build* streets, sewers, water and other capital improvements. It is one of several methods to *finance* those improvements.
 - Do not allow owners and/or developers to go unchallenged when they incorrectly compare the costs to *build* capital improvements with legal and *financial costs*, and *the design, acquisition of rights-of-way*, and *building costs*. If there is a single issue that is more important than any other issue involving LID financing it is that LIDs are financing and legal tools, not engineering tools.

Contributors: Gary Bourne, Rod Kaseguma, and John Carpita

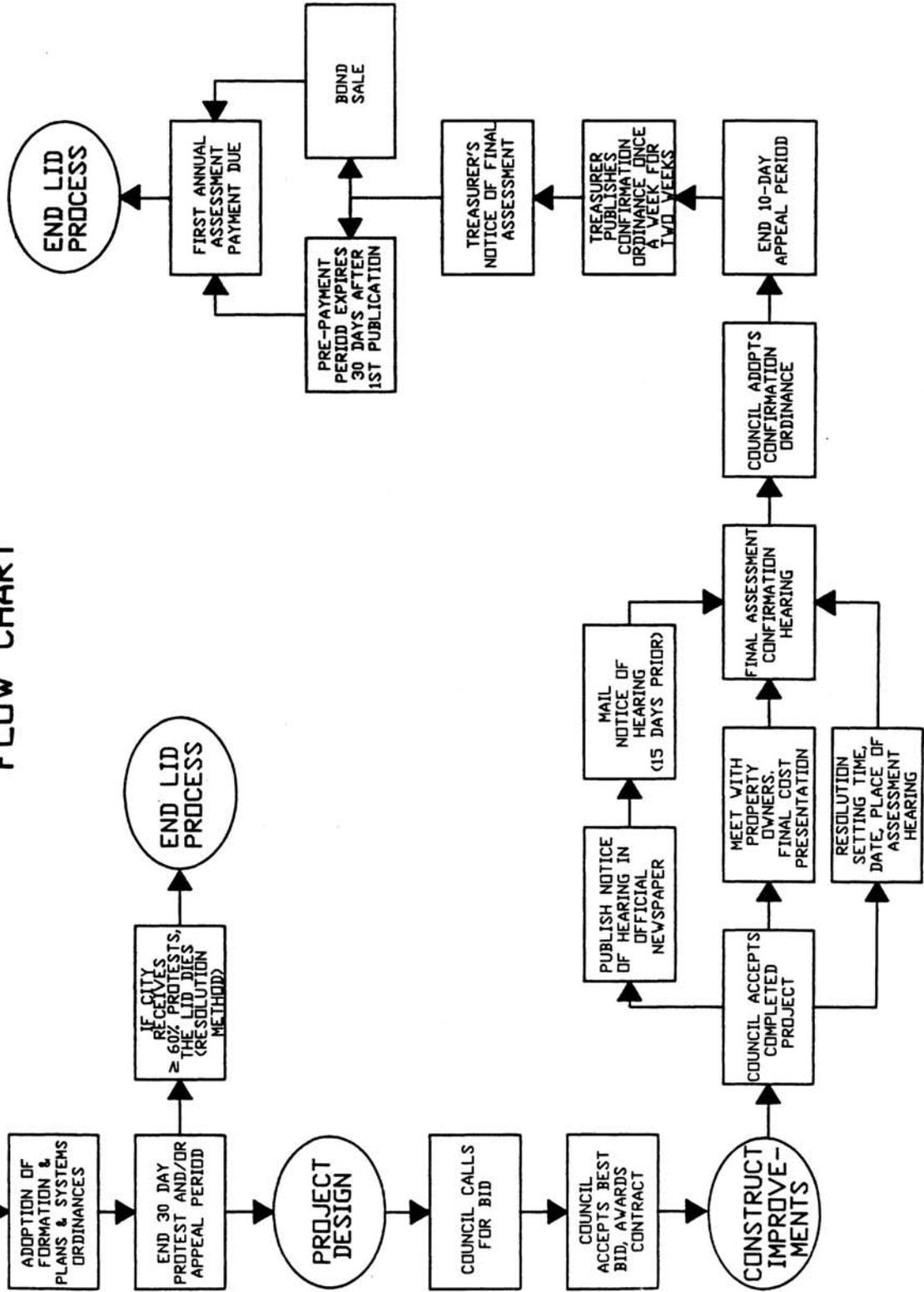
LOCAL IMPROVEMENT DISTRICT FLOW CHART

Sheet 1



LOCAL IMPROVEMENT DISTRICT FLOW CHART

CONTINUED FROM
SHEET 1



Chapter 4

Financing LIDs

Introduction

Over the past several years there has been a significant decline in the number of LID projects financed in the state of Washington. At the same time, underwriters have shifted toward the institutional investor as apposed to the individual investor. As a result of this combination of events, there is a reduced market for LID bonds at a time when, due to shrinking resources, LIDs make sense as a method of improving infrastructure for those that will directly benefit from it. Picking a financing team with experience is more important now than ever before.

The entire LID process is about *financing* infrastructure improvements, not constructing them. The construction is only possible if financing can be obtained. Consequently, a determination if an LID project can be financed should be made prior to formation of the LID. As a result of this determination, additional costs necessary to attract investor or lender interest in the financing can be included in the preliminary assessment roll, avoiding a surprise for the property owner at a later date.

LID processes lead, ultimately, to loans or the sale of bonds to investors and the retirement of that financing via annual payments by the property owners within a district. Goals of the LID process are twofold: to present a financing to investors or lenders that will entice them to invest at as low a rate of return as possible; and to assess property owners as fairly as possible in relation to the special benefit received.

Financing LIDs

Strategic Planning Is Key to Successful LID Project Financing

Projects that provide benefit to property owners that are well received by the owners, that are well secured for the investor, and that meet all statutory requirements and protect the funds of the municipality, are usually well received by the financial institutions and the bond market when financing is required. Projects that provide marginal benefit to the property owner, that are not well secured for the investor, that put the municipality's funds at risk and that present legal challenges, may find it difficult if not impossible to get financing. Consequently, it is important to strategically plan the LID financing prior to the formation hearing to determine the viability of the financing that will be obtained when the project is completed. Planning ahead will allow the municipality to change the nature of the project or the repayment sources if necessary, to assure successful financing.

LID financing typically involves two different lenders. One provides the construction financing after the district is formed. The other provides permanent financing after the project is completed and the assessment roll is finalized. The lender for the construction or "interim" funding is usually a bank. The lender for the permanent financing is usually investors to which an underwriter sells the LID bonds. The bonds can also be purchased by a bank for its own loan

portfolio, instead of by an underwriter. Though this is less often the case, it sometimes produces a lower cost of funding for small LID projects, particularly if the term is 15 years or less. Throughout this chapter the term underwriter will refer to either the underwriter which in turn sells bonds to investors, or a bank which purchases the bonds for its own portfolio. When referring to construction or interim financing, only the term lender will be used, referring to a bank.

Put a Financing Team Together Early

An essential feature of the planning process is to put a team together consisting of those that will be a party to the financing. The financing team includes the municipality, its bond counsel, financial advisor and even the investment banker representing the underwriter or the lender that will be providing the interim financing when the project is constructed and permanent financing when the project is completed. In many cases, those providing the financing should be involved even if completion of the project and the permanent financing is over a year away, particularly for developer projects (significantly undeveloped properties). Additionally, an MAI appraiser may be needed on the team if it is suspected that some of the properties may not benefit from market value increases equal to or greater than the assessed cost of the improvements, or if the ratio of the market value of the properties to the estimated assessment on the properties might be less than would be acceptable to the underwriter or lender. Using an experienced financing team will help make the financing process as smooth and trouble free as possible. It will also assure that the project can be financed and at favorable rates for the property owners.

Prior to formation of the LID the financing team will help determine the financial risks for the project as originally envisioned and any difficulties there may be in obtaining funds for construction or permanent financing. If the project is a developer LID, one in which there are few property owners or largely undeveloped land, special considerations might be required of the property owners in order to make the financing a success. The considerations may consist of letters of credit, accelerated foreclosure agreements, deposits to special reserves, project contributions, or a combination of these or others. To be fair, the property owner needs to know these requirements and their resulting costs prior to formation, not after construction. The owners may be unable to pay for or unwilling to agree to additional considerations.

Alternately if, in order to make the financing a success, the municipality must improve the security for the financing by increasing the balance in the guaranty fund or by contributing funds to the project, it must know that prior to formation so that it can determine the method of increasing the fund's balance or whether to withdraw support for the project.

Roles of Financing Team Members

The financing team is responsible for developing a financing plan that balances the risks to municipality and to the financing provider with the costs to the property owners. If a proper balance is achieved, the project can be financed and at favorable rates. If the risk is too high or the cost too great, the financing will fail and the project should be abandoned. Members of the team contribute expertise related to their responsibilities that help assure success for the project financing even before the legal formation of the district.

1. The municipality provides key information about its willingness to be involved and the importance of the project to the community and the property owners. This information includes:

- political will of the council or commission;
- willingness of the municipality to contribute funds to the project if needed;
- need and desire for the infrastructure;
- willingness of the property owner or the municipality to contribute funds to the guaranty fund, reserves, or other credit enhancements, if necessary;
- ability to administer the assessment roll;
- willingness and ability to pay for pre-formation engineering and design costs, even if the project fails;
- Municipality's policy regarding the collection of delinquent assessments; and
- history of the municipality's willingness and commitment to foreclose on delinquent assessments.

Information the municipality brings to the planning process in addition to its willingness and commitment to the project includes:

- engineer's estimate of the project cost and the estimated assessment per parcel;
 - parcel listing and map of the LID area;
 - valuation of each parcel and whether they are improved or unimproved;
 - amount of LID notes and bonds outstanding secured by the guaranty fund;
 - whether properties within the district are in other districts and their assessment payment history and;
 - balance in the guaranty fund available for the LID payments.
2. The financial advisor works on behalf of the municipality. The advisor examines the characteristics of the LID and those of the municipality, and through experience determines which characteristics can affect the marketability of the project's financing. The advisor presents his analysis to the team to assist with the planning effort. Among others, the characteristics include:
- ratio of each property's assessed or market value relative to the estimated assessment to be charged and the acceptability of those ratios to the financial markets;
 - ratio of improved and unimproved properties to the total assessments to be charged and the potential impact on financing;
 - potential impact on the financing of the delinquency history of property owners within the proposed LID, and if those properties are part of another outstanding LID;

- whether property owners in the proposed LID are delinquent on tax payments and the potential impact on financing;
- distribution of the assessment load among the assessed properties and whether or not the distribution indicates the need for credit enhancements;
- credit of the municipality and its potential impact on a lender's perceptions of the ability of the municipality to make payments in the event of property owner default and;
- if there is a need for credit enhancement, the options and the amount needed to assure favorable marketability of the financing and to protect the municipality.

The financial advisor can help select the underwriter. The underwriter works on behalf of the investor whom they sell the bonds to. The advisor will present the municipality's point of view and needs to the underwriter when negotiating financing structure, credit enhancement needs and other factors that represent financial risk to the municipality. Alternatively, with a well-secured and structured LID, the financial advisor can help prepare bid documents and take the financing to a competitive public bid, analyzing the bids received and making recommendations for council or commission action. It should be noted that, due to the unique nature of the LID, competitive bids are rare.

3. The Underwriter sells LID bonds to investors at the completion of the LID project construction. The lender provides a short term loan or interim financing for the construction of the LID project. The credit quality of any LID is a balance of factors that contribute to an investors' or the lender's confidence that the financing will be repaid. If, after analyzing those factors, the financial advisor determines that the pending project may represent a risk to the investor or the lender, the underwriter should become a member of the financing team prior to formation of the LID.

As a member of the financing team and a representative of the interests of the investor, it will be possible to negotiate directly with the underwriter to develop a financing structure that will provide the credit level the investors require. The negotiations may include among others, special credit enhancements, municipal contributions to the project and unique repayment structures. In addition, the involvement of the underwriter may be critical to the municipality's ability to obtain construction funding for the project as will be described in more detail later.

If the underwriter requires special considerations, it is important to know those requirements and their associated costs prior to formation of the assessment district so that estimates of the costs can be included in the preliminary assessment roll.

4. Bond counsel works on behalf of the municipality and guides the financing team through the legal and tax issues facing the project and its financing. Minor errors in actions taken, documents written or statements made by municipal officials or representatives can have significant or damaging impact on the legal framework necessary to achieve the desired financing goal of the municipality. Bond counsel, in cooperation with the municipality's own counsel, can help to avoid these pitfalls or correct mistakes, if made.

Bond counsel provides the legal and tax opinion required for financing. Also, if agreements, credit enhancements or innovative solutions to financing problems are needed or proposed, Bond counsel provides advice on legality as well as the legal

language to be used. Bond counsel is also an important resource for discussions relating to arbitrage compliance and securities regulations. Consequently, it is important to make Bond counsel an early member of the financing team.

5. Due to legal considerations and/or the quality of information available regarding the value of the properties to be assessed, an MAI appraiser may also be a necessary member of the team. The MAI is retained by the municipality and will establish the market value of the properties before and after the proposed improvements from which the preliminary and final assessment rolls can be “spread” among the property owners to be assessed. The before and after market values established by the MAI may also be critical in determining the municipality’s ability to obtain funding for the project. The appraiser will also provide the necessary support in the event of a legal challenge by property owners regarding the amount of assessment charged to their property.

Costs to Be Included in an LID

Statutes provide for the inclusion of virtually all of the costs associated with the creation, formation, construction, confirmation and related financing costs of an LID. Since, in most cases, the individual property owners realize a significant gain in the value of their property as a result of the project improvements, it makes sense to charge property owners for costs associated with the project as part of the LID financing rather than for the municipality to absorb those costs. All costs intended to be included should make it to the preliminary and final assessment rolls and be included in the financings. To assure that no costs are inadvertently missed, the financing team should review the costs prior to the preparation of the preliminary and final assessment rolls to assure their inclusion. Once the final assessment roll is confirmed it is very difficult to go back to include costs accidentally left out.

Examples of cost related to an LID that can be assessed include are:

- Construction
- Engineering and design
- Legal fees
- Rights-of-way acquisition
- Interim (construction) financing interest and any issuance costs (including underwriting, bond counsel, note printing)
- MAI appraisal fees
- Funding of the guaranty fund or reserve, if needed
- The municipality’s cost of:
 - administering the roll over the life of the LID;
 - administration of the LID project before formation to after confirmation;
 - annual bond registrar expenses;
 - arbitrage rebate tracking services; and
 - legal printing and publication.

- Issuance costs for the LID bonds:
 - bond counsel
 - underwriting
 - rating and insurance, if rated or insured
 - bond printing
 - official statements and continuing disclosure
 - closing

If there is any doubt as to whether a cost should or legally can be included, check with the financing team members, particularly bond counsel and the financial advisor. Some costs may be customarily absorbed by individual municipalities. That is an individual choice.

Protecting a Municipality's Funds

If property owners fail to make assessment payments, the municipality may be required to draw on the guaranty fund or reserves to make debt payments. If the guaranty fund is depleted, the municipality will be required to replenish the fund unless the ordinance or resolution under which the bonds were issued provides otherwise. Since foreclosure actions can take several years, there may be a significant threat of default on the bonds if provisions are not made to secure the bonds with the guaranty fund or a reserve. Underwriters will likely demand that a sufficient reserve or the guaranty fund be pledged to the payment of the bonds and that provision for replenishment of the guaranty fund or reserve be in force. Default is not acceptable. Default is a dirty word, which can affect the general credit of the municipality, even though it was not technically or legally liable for the debt repayment.

To avoid default, it may be necessary to use funds of the municipality to make payments until the guaranty fund or reserve can be replenished or foreclosure proceeds have been obtained. Consideration of this possibility should be made in the formation stages of the LID process. There are several ways the municipality can protect itself from such occurrences. These include among others:

- Increase the size of the existing guaranty fund or reserve using financing proceeds (backed by the assessments) or municipal funds;
- Avoid LIDs with single or few property owners;
- Avoid LIDs with largely undeveloped properties;
- Only create LIDs in which properties have a high assessed or market valuation to assessment ratio;
- Create stiff penalties for assessment delinquencies;
- Have a reputation for aggressively collecting and foreclosing;
- Avoid projects that are too big and expensive.

Statutes have been created which affect the establishment and use of the guaranty fund for an LID. Prior to the formation of the LID, the use of the guaranty fund should be determined and the appropriate legal language for its use established. Bond counsel should provide this advice

particularly since they are uniquely qualified to be fully current on municipal law and the statutes affecting financing.

Establishing the Size of the Guaranty Fund or Reserve

It will be assumed for the purposes of this section that underwriters and lenders will require the pledging of the guaranty fund or an adequate reserve for most if not all of the LID and ULID project financings a municipality is likely to undertake. There may be exceptions to this rule but a municipality should not assume that it could finance an LID without such a pledge prior to actually negotiating the financing with the provider.

Establishing an appropriate balance for the fund is important to protect the municipality and the financing provider. If there is a perceived risk that the guaranty fund will be drawn upon to make the required interest and principal payments on the debt, the fund should be sized to avoid the potential of being fully depleted. Typically, LID guaranty funds are set at or just below the maximum amount above which the debt would be considered arbitrage bonds under treasury regulations. This is approximately 10 percent of the principal amount of bonds issued. Arbitrage should be considered when establishing the guaranty fund balance with the aid of your financing team and/or an arbitrage compliance specialist.

For LIDs that have fully developed properties and a high ratio of property value to assessment, a large guaranty fund or reserve may not be necessary as it is unlikely a property owner would risk foreclosure on his/her property by defaulting on his/her assessment payments. Conversely, an LID with few property owners who have much to gain from the LID project and little to lose may decide not to pay, forcing large draws on the guaranty fund. If the fund or reserve is not large enough, municipal funds, taxes, or in the case of ULIDs (Utility Local Improvement Districts), utility revenues may be at risk.

In today's economy, the risk of bankruptcy or bank foreclosure is greater than it has been in many years. Consideration of this risk must be taken into account when sizing the guaranty fund and analyzing the credit of the LID as a whole, whether it be a developer project or one with a large number of property owners or one with high value to assessment ratios. Bond counsel can provide guidance as to how the municipality can protect itself and the investor should this issue present itself. The financial advisor and the underwriters or lenders can also provide guidance that will assure the marketability of the LID when funding is to be obtained.

For certain LID projects, the lack of a sufficient guaranty fund balance can be supplemented or replaced by alternate sources of security. These alternate sources are usually available to LIDs which have a single or few property owners of substantial means. The security enhancements may include:

- letters of credit;
- accelerated foreclosure agreements;
- corporate guarantees;
- separate reserves.

These enhancements are provided by the property owner and effectively increase the amount of money available to make payments on the debt in the event of non-payment of assessments. However, accelerated foreclosure agreements are not available to the provider of the construction funding, as they require the establishment of an assessment lien. It is very important that if it is determined that one of these enhancements will be needed, that it be

obtained prior to construction. It is not likely that the property owner will agree to provide the enhancement after the project has been completed.

Structuring LIDs and ULIDs

LID and ULID assessment roll lengths can impact the acceptability of financing for lenders and investors. Typically, investors prefer LID bonds that have annual estimated principal maturities that are of sufficient size to attract their interest. If a small project has a 20-year assessment roll, the annual estimated principal maturities could be too small to be attractive unless the interest rate is high relative to other issues available to the investor.

The financial advisor can provide guidance on setting the length of the assessment roll such that it will provide favorable market acceptance for the financing and not prove too much of a payment burden for the property owners. Typically, fully developed residential LIDs have assessment rolls of 15 to 20 years in length. Developer and business LIDs have rolls typically of 10 to 15 years in length. However for each, the average size of the individual assessments and the likely ability of the average property owner to make the annual payments, are considered in setting the length of the roll. Also considered is the likely amount of pre-payments that will be received during the prepayment period and over the life of the assessment roll. Once again, it is important to consider and make these decisions prior to the formation of the district to provide adequate information to the property owner about the annual payments required.

The municipality is required to call as many LID bonds as reasonably possible each year with assessment payments received. Utility Local Improvement District bond issues do not have such a requirement. ULID bonds are typically structured to match the cash flow expectations of revenues produced by the rates of the utility in combination with the estimated assessment payments. ULID bonds typically have a call date that matches revenue bonds in the market with similar maturity lengths. However, it is possible to sell ULID bonds with an annual call, which will allow the matching of bond payments with assessment collections. The interest rates on a bond issued with an annual call will likely be higher than those of similar bonds with a standard revenue bond call feature. But, depending on the municipality's utility cash flow and outstanding bond covenants, the higher rates may be an appropriate trade-off. Consideration of the call feature of a ULID bond will not have an impact on the structure of assessment payments but it will have an impact on the assessment rate paid.

Construction or Interim Financing

Project construction and its financing are approved with the passage of the assessment district's formation resolution or ordinance. Between the formation of the district and the confirmation of the final assessment roll, long term LID funding cannot be obtained because no lien has been established on the properties in the district. Construction must be funded during this period. If internal funding is not advisable or possible, it will be necessary to obtain financing from a construction lender, typically a bank.

There are unique problems associated with construction financing. First, a proper term or length must be set for the funding. LIDs are notorious for having unpredictable construction and roll closing periods. This is due in large part to the hearing process and the time it takes to complete an appraisal after construction, if one is required.

After the final roll is spread and handed to the property owner, that owner has an opportunity to challenge the amount of the assessment at the final assessment roll hearing (confirmation

hearing). If there is a challenge and an unsatisfactory ruling is made at the hearing, the property owner could take the challenge through legal appeals. Bonds often cannot be sold while assessments are on appeal, forcing a delay in the repayment of the construction financing. Also, the council or commission in its efforts to be fair and impartial could extend the hearing, causing a repayment delay. These and other factors contribute to the lack of predictability for the term of the interim financing.

The term of the construction funding should be set long enough to take into account reasonable extensions of the period for closing the assessment roll. The loan should also be callable at any time, with as little a penalty as possible, to provide the flexibility to pay off the loan at the earliest available date.

Further complicating the issue for the construction lender is the lack of security for the financing. Since the lien on the property is not perfected until the completion of the final assessment hearing and the filing of the roll for collection, the construction lender has only the guaranty fund and the good will of the municipality as security for the financing unless some other arrangement is made. Consequently, it is very important to the lender that the long-term financing for the project be viable at completion of the project. Often it is a requirement of the construction lender that a "takeout letter" be available from a qualified financial institution or underwriter, committing to the purchase of the long-term debt, when issued, before the lender will provide financing for the construction.

Since no assessment revenue is received during the construction period, interest on the loan that comes due during the construction period will have to be capitalized and paid from the proceeds of the construction loan. This is an important factor in the proper sizing of the LID construction loan. Often, if the lender consents, interest is paid only at the maturity of the loan. Some projects however, have construction periods that are too long for lenders to accept a delayed interest payment.

Not All LID Projects Can or Should Be Financed

It should not be assumed that a project can be financed through LID assessment bonds. Some projects may provide infrastructure improvements for properties that lack the value to support LID debt. There may also be legal or tax problems which will doom financing. Determination of risk to your municipality as well as the lender and the investor is an important part of the LID process and may determine the inadvisability of supporting a project. Use your financing team to help you make those determinations prior to formation of the assessment district.

Understand the Financial Risks Taken to Fund LIDs

A lender or underwriter risks capital, investors risk capital and investment return, and the municipality risks its own funds when embarking on and funding an LID project. As a municipality, work to minimize risk by helping to make sure the LID or ULID issue is of good credit quality, is well secured and that information regarding the project and its financing are fully disclosed to all interested parties. Since there are a limited number of investors willing to purchase LID issues, it is important to understand their needs and if possible, properly balance the municipal and investor risk. Municipalities who ignore the needs of the investor, risk a higher cost financing at the least and at the worst, an inability to finance at project completion.

Continuing Disclosure Undertaking

Publicly issued LID financings fall under the requirements of the SEC 15c2-12 regulations. If the issue meets the size thresholds of the regulation, reporting to the Nationally Recognized Municipal Securities Information Repository (NRMSIR) is required. Of particular importance for reporting is the annual call of LID bonds. LID bonds are relatively unique in that they have annual unscheduled calls of bonds. The calls are unscheduled in that the number of bonds called is dependent on the receipt of assessment payments and cannot be scheduled at the time of issuance, only estimated. Prior to the issuance of the bonds and the passage of the financing ordinance or resolution, review the reporting requirements under 15c2-12 with bond counsel and set up the mechanism for annual reporting under the regulation.

Arbitrage Tracking

LID financings are subject to the Arbitrage Regulations in the same manner that all other b are subject to the regulations. If arbitrage is earned, rebates must be paid.

A rebate requirement will most likely be incurred as a result of the balance and interest earnings of the reserve or guaranty fund for the LID bonds. Arbitrage tracking is necessary to insure compliance with the regulations and may be accomplished by qualified people and software programs within your municipality or by independent professionals who specialize in providing the service. Given the potential penalties for failure to comply, the cost of the professional service is relatively low at the current time. Ask your financial advisor and/or bond counsel for a list of firms who provide the service. In addition, keep accurate records of the interest earned in the reserve or guaranty fund as well as the debt service fund and do not commingle the funds with other funds and accounts.

Contributor: Steve Gaidos

Chapter 5

Assessment Methods

Introduction

Statutes and case law specify that the assessment per parcel must not exceed the special benefit adhering to the parcel due to the improvement and the assessments must be proportionate to one another. Special benefit is defined as the difference between the fair market value of the property before and after the local improvement project. A corollary to these principles is that property not benefitted 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. – a reviewing court will be concerned only with these criteria. Even if a project lends itself to a front footage assessment method (i.e., uniform lots, similar zoning) or is not large enough to warrant a complete special benefit analysis, it is wise to check a few strategic parcels with a feasibility study or a limited restricted type of appraisal. This will prevent unpleasant surprises at the final assessment roll hearing.

Appendix Four contains examples of assessment computations using both mathematical methods and an analysis of special benefit.

LID/RID Special Benefit/Proportionate Assessment Study

Introduction

For ease of reading, “LID” will be used rather than other acronyms although the information presented herein pertains to municipal districts other than a local improvement district (LID), such as road improvement district (RID) and local utility district (LUD).

Typically, the scope of services involves a formation special benefit study or feasibility analysis which may be utilized by municipalities to establish a proposed LID boundary, ascertain the probable economic feasibility of the project and perhaps consider the effect of alternative design elements on the preliminary assessment ratio.

A final special benefit study is an assessment method that documents the proportionate amount of the total LID assessment to be levied on each specially benefitted assessable property. The special benefit estimates and resulting recommended assessments are designed to comply with RCW statutes and case law precedent. Municipalities and property owners may utilize municipal special benefit studies to become more informed about the economic influence of the project on the neighborhood, the assessments recommended on other specially benefitted properties within the LID boundary and the validity of proposed assessments to be levied on specific properties.

Owners may also engage real estate professionals to perform special benefit studies in order to document protests to assessments at final assessment roll hearings. Because the municipalities have the presumption of being correct in the administration of a LID, parcel appraisals or special

benefit studies may be used by owners to attempt to remove the presumption that project improvements provide a special benefit and that proposed assessments are fair and equitable to each benefitted parcel. In the event that an owner does not prevail in protesting an assessment at the final assessment roll, the special benefit study may be used as part of the record to support appeals to Superior Court.

The narrative special benefit study report serves as support for informed decisions by both municipalities and property owners. The report and testimony, if requested, of the special benefit analyst/appraiser provide documentation of assessment recommendations at the final assessment roll hearing.

Special Benefit/Proportionate Assessment Studies – Phases of Analysis

Feasibility Analysis

Due to the ever-changing real estate market, it is often advisable to conduct a feasibility study as an initial analysis in the LID formation process. This enables municipalities and property owners to evaluate the economic feasibility of a project by comparing the probable range in special benefit to the project cost or amount to be levied on assessable property.

If the project is economically feasible, the next phase is a formation special benefit/proportionate assessment study, followed by a final special benefit study. Typically, but not always, the final special benefit study is undertaken at or near the completion of project construction. Each of the above phases is briefly discussed below.

A feasibility study involves a preliminary investigation of the proposed improvements and the neighborhood in which they would be constructed, together with an analysis of the extent and intensity of influence of the proposed project on market value.

Unlike the more detailed formation and final special benefit studies, the feasibility analysis does not provide a recommended per parcel assessment. The scope of work is more general in nature with benefitted properties segregated into classifications based on highest and best use. Representative parcels within each classification are then analyzed without as opposed to with the LID assumed completed. The market value difference (special benefit), typically expressed as a range, is then extrapolated over similar properties in each respective classification, arriving at a total special benefit range that can be compared to the assessment amount. This phase of the study can be very useful to the client in considering a project's feasibility and is often used in decisions on whether or not to proceed with the LID.

Special benefit/proportionate assessment studies for municipalities may consist of two separate assignments, both of which utilize mass appraisal techniques. The first assignment is an LID formation study and the second is a final assessment roll study.

Formation Special Benefit Study

Typically, the first work sequence, occurring in conjunction with the preliminary investigation, involves preparation of a property ownership map outlining the general extent of project improvements and measurable special benefit influence on market value due to the LID project. The ownership map is utilized in defining and documenting the extent of special benefit due to the project and is part of the basis for the boundary location recommended for the proposed LID. The work product from a prior feasibility study can also be utilized in this phase.

Next, investigation of physical and economic characteristics of each parcel and a base study are undertaken, consisting of the assemblage of pertinent market data and study of the environmental, economic, governmental and social forces influencing the subject area. Consideration is given to current zoning, land use trends, existing building improvements, highest and best use and other factors influencing market value for each property type or ownership, without and with the amenity of the LID project.

All tracts within the designated LID boundary are outlined on a map, with each tract's owner of record noted. Taking into consideration unity of ownership, continuity of the tracts and unity of use, a LID parcel map is prepared. This map provides a basis for preparation by engineers of a legal description of the district.

When the probable increase in market value disclosed from this preliminary analysis is greater than the proposed assessment, the LID project is concluded to be feasible without modification. At this point, the analyst can also provide further insight for the municipality into the influence of alternative design elements of a project and the resulting change in the ratio of special benefit to total assessment. Completion of the analytical portion of the formation special benefit study results in the following major conclusions:

1. Recommendation as to location of the LID boundary,
2. Recommendation as to the assessment/special benefit ratio for the proposed project,
3. Recommendation as to a preliminary assessment to each benefitted parcel.

Following is a brief discussion of the formation special benefit portion of the study that generates the results listed above. After exterior inspection of each parcel within the LID, the economic base study of the neighborhood is utilized to prepare estimates of highest and best use and probable market value of each parcel within the LID boundary without the proposed improvements.

The base study is then expanded to include the study of market data with elements of similarity to the subject parcels, assuming completion of the project. This expanded base study, relating to the LID under the assumption that LID project special benefits are attached, is utilized to prepare an estimate of highest and best use and probable market value for each parcel assuming completion of the proposed improvements within a defined time span. The terms "without" and "with" LID-funded improvements are intended to be virtually synonymous with "before" and "after" references in precedent-setting legal decisions. The terms are utilized within this portion of the LID Manual to avoid an implication that the date of valuation is controlled by the date of physical construction of LID improvements.

The increase in probable market value adhering to each parcel is the measure of special benefit due to the LID project. The municipal LID administrator provides the total proposed assessment amount. The sum of special benefits estimated for each parcel is the total special benefit attributable to assessable property within the proposed LID; this total divided into the total LID assessment provides the assessment ratio, or the LID cost per dollar of special benefit. The special benefit to each parcel multiplied by this cost/benefit ratio results in the individual assessment recommended to that parcel.

The recommended preliminary assessments meet the following two criteria:

1. Each recommended preliminary assessment is equal to or less than the special benefit adhering to that particular parcel.

2. Each recommended assessment is reasonably proportionate to the special benefit adhering to that parcel and all other parcels due to the LID-funded project.

Completion of the first assignment results in a formation special benefit study report which outlines the recommended LID boundary and provides a narrative summary of the study and a tabulation of recommended assessments to all assessable parcels specially benefitted by the project. This special benefit/proportionate assessment study may be utilized by the municipality and property owners as part of the basis of their decision to form or to oppose formation of an LID.

Subsequent to completion of this assignment, the analyst can be engaged to make a presentation at the LID formation roll hearing. If requested, the special benefit analyst's presentation at the formation hearing outlines: (1) basis for location of the LID boundary, (2) economic feasibility of the project and (3) general description of the assumptions, data, analysis, and appraisal techniques. The purpose of this hearing is to inform property owners, respond to their concerns, and provide a forum for the municipality to decide if an LID is to be established within the boundaries they designate, taking into consideration proposed improvements, aggregate special benefits and total amount of proposed assessment. The various recommendations are presented to the municipal council for use in their decision on LID formation.

Final Special Benefit Study

A special benefit study for the final assessment roll hearing is typically the final phase of this portion of the LID process. This study may occur prior to construction of the LID-funded project, during construction, or some time after project completion. The final special benefit study may be the initial special benefit study made on a LID project, in this event the study would follow a sequence of research and analysis similar to the preceding discussion relating to a formation special benefit study. If the final study was preceded by a formation special benefit study, an update is made of relevant market data, the base studies are reviewed and current trends resulting in indications of market value for each parcel are analyzed.

Available records are again verified to research and document changes in ownership of all or any portions of the subject parcels. The impact of ownership changes, subdivision activity and trends affecting highest and best use and market value of each parcel is analyzed.

Presentations are made at informational hearings or meetings with individual property owners, when requested by the municipal authority, prior to the final assessment roll hearing. Pertinent information provided by property owners is also noted and considered. Any discrepancies in factual data, such as usable land areas, are researched and resolved.

The probable market value of each parcel without and with the special benefit characteristics resulting from the LID project is estimated (typically as of the date of the final assessment roll hearing) in order to arrive at an opinion of special benefit to each parcel. Two appraisals are made of each parcel or economic entity. One appraisal results in an opinion of market value of existing property rights without the influence, if any, of the LID-funded project. The second appraisal results in an opinion of market value of property rights adhering to the property with the project constructed or to be completed within a specific time period. Property characteristics, highest and best use and market value opinions in the without and with appraisals are considered as of the same date of valuation.

Again, special benefits are totaled and divided into the total LID assessment to obtain the overall assessment/benefit ratio. The special benefit attributable to each parcel is multiplied by this constant ratio to arrive at recommended assessments. A significant variance in the assessment per square foot or per front foot is sometimes noted on adjacent properties. This can result from the influence of factors including but not limited to existing building improvements, differences in zoning or projected intensity of use, corner influence, terrain, wetlands, ratio of frontage to area, or changes in access characteristics.

Because differences in special benefit to individual properties are measured by the special benefit analysis, the method results in a fair and equitable allocation of assessment to all parcels that is in proportion to the individual special benefit. Assessments made on a formula basis (such as zone and termini, per square foot or per front foot) may result in amounts that are not fair and equitable between parcels within the overall LID. Formula or mathematically-based assessments may be less than or exceed the proportionate assessments indicated by the special benefit adhering to parcels as a result of the project.

Completion of the second assignment results in a special benefit study report that includes narrative and summary tabulation sections. The narrative section explains the assumptions made and techniques used for the study as well as providing documentation for the conclusions shown in the final assessment roll tabulation. The tabulation section consists of a summary of recommended assessments to each benefitted parcel.

As in the formation special benefit study, recommended assessments meet the following two important criteria:

1. Each recommended assessment is equal to or less than the special benefit adhering to that particular parcel.
2. Each recommended assessment is reasonably proportionate to the special benefit adhering to that parcel and to all other parcels due to the LID-funded project.

The special benefit analyst is again prepared, if requested, to make a presentation at the final assessment roll hearing explaining techniques used, assumptions made, basis of special benefit and resulting recommended assessment to each parcel. The analyst responds to LID protests or contradictory testimony in order to provide unbiased information to property owners and the hearing authority. Testimony of the analyst/appraiser, along with the special benefit study report as an exhibit, is made part of the record during the final assessment roll hearing.

Summary of LID Special Benefit Analysis

Major Phases

1. Recommend an LID boundary that encompasses all property specially benefitted by the proposed LID project, if requested by the client.
2. Document economic feasibility of the project, with separate analysis of alternative project improvements, if appropriate.
3. Recommend assessments that are proportionate to the special benefit adhering to each assessable parcel.

Formation Criteria

1. Encompass only the legally assessable area, or include provisions for voluntary participation by the owners of exempt property.
2. Encompass only the area specially benefitted by the LID project.
3. The total special benefit must approximately equal or exceed the total assessment to be levied.

Need for a Special Benefit Study

A special benefit analysis is recommended when:

1. Uncertainty exists regarding financial feasibility of the proposed project or portions thereof.
2. Uncertainty exists pertaining to the limit of special benefit influence and, therefore, location of the LID boundary.
3. The proposed project includes property with irregularly shaped ownership lines or significant variation in other physical characteristics such as topography, soils, drainage, wetlands and amenities such as view or water frontage.
4. The LID boundary encompasses property with varying intensities of use or zoning designations, variations in use and value created by specific locations, changing land use regulations or highest and best use.

A special benefit analysis is not recommended when:

1. It is acknowledged that the special benefit attributable to the project exceeds the total amount of LID assessment.
2. Ownership lines are reasonably regular or in proportion to each other.
3. There is insignificant variation in intensity of use because of land use regulations, topography, soils, drainage, wetlands or changes in highest and best use due to the LID project.
4. It is not probable that the LID formation, boundary location, property assessments or proportionality of individual assessments will be contested.

Utilize a Special Benefit Analyst to Resolve Issues

1. Make a preliminary investigation at the inception of a proposed LID project and provide an opinion as to economic feasibility of the overall project and/or various components thereof.
2. Recommend an LID boundary which encompasses all specially benefitted property and provides support to withstand appeals to Superior Court.

3. Consider general benefits as well as special benefits; if appropriate, consult with bond counsel and recommend the documentation of underlying assumptions included in the foundation of estimates of special benefit resulting from the LID-funded project. Consideration may also be given to those construction costs related to meeting design standards which may be general benefits, as distinct from construction costs emanating from requirements of the LID project.
4. Prepare a formation special benefit study report and, if requested, make a presentation at the formation hearing to document decisions on both overall project feasibility and boundaries selected as well as providing information to owners of property within the proposed LID.
5. Prepare a special benefit study report for the final assessment roll hearing. If requested, an appearance at the final assessment roll hearing serves to explain and present documentation for the basis and amounts of assessments and establish, for the record, that the assessments are fair, less than the special benefits and in proportion to all other assessments to be levied on property within the LID boundary.
6. Respond to conflicting testimony and cross examination by property owners or their attorneys with unbiased data that contributes to a complete final assessment roll hearing record.

Mathematical Methods

To calculate individual assessments for improvements in an LID where there is a grid work of north-south and east-west streets, the mathematical cost distribution formula called *zone-termini* is often effective. This method of cost distribution is described in RCW 35.44.030 and .040.

Other mathematical formulas include the area (square foot or acre) method and front foot method. Simple utility and street projects in platted residential neighborhoods are usually good candidates for equal assessments per lot. The area method of cost distribution is often preferable for major sewer and water projects and is often applicable to LIDs in commercial areas. Front foot distribution of costs is often preferable for street lighting projects. It is possible to have a need for several different types of assessment units within one district. Assessments for trunk sewers and pump stations as well as assessments for lateral sewers against individual lots are examples.

Mathematical cost distribution formulas such as area, front foot and zone-termini are usually easy to explain to affected property owners and they are always less expensive to calculate than the special benefit analysis method. Sometimes mathematical formulas will not fairly distribute special benefit. When a mathematical formula is not used, a qualified, experienced appraiser should be employed to conduct a special benefit analysis. On projects where there is a mixture of land uses, zoning, or when major topographic changes occur in the district, it is recommended that the special benefit analysis method be used.

Note: It is easy to embrace the thought that if an improvement will cost \$400 per foot to construct along the frontage of a certain property, then that property will be assessed \$400 per foot. This is a deception! Remember that assessments must be based on the increased value of the property resulting from the improvement, not on the cost of the improvement.

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Chapter 6

Public Hearings

Introduction

Cities should do their absolute best to work with property owners to resolve their concerns. Even where a city works closely with property owners, a lawsuit may be filed, despite the city's best efforts. Statutory limitations and fairness to other property owners prevent a city from granting all of a property owner's demands. Formation hearings and final assessment roll hearings should be conducted with possible litigation in mind. Formal rules of quasi-judicial procedure should be formulated and distributed well in advance of the hearings to the council and LID participants. In the final assessment roll hearing, the city council acts as a board of equalization to consider evidence presented by both staff and property owner as to the correctness of the assessment for each parcel. The final assessment roll hearing must be fair, open, impartial and structured.

Both hearings may be held before the full city council, a committee thereof or a hearings officer (examiner) (RCW 35.43.140). The following discussion under "Making Your Record" applies to all three instances.

Making Your Record – Orchestration for Litigation

Introduction

Despite the best efforts of all involved – administrators, engineers, attorneys, and city officials – sooner or later a city will face the wrath of a property owner disgruntled with some aspect of an LID. A lawsuit will be filed. Therefore, every formation hearing and final assessment roll hearing should be conducted with an eye toward litigation. The city should take those reasonable steps within its power to enhance its chances of winning a property owner's LID lawsuit. The discussion which follows outlines a number of steps which can be taken in anticipation of litigation.

During the life of every LID, there are two hearings. The first hearing occurs when the city is contemplating ordering public improvements that are to be financed by LID assessments. (RCW 35.43.140; 35.43.150) A second hearing usually occurs after the improvements have been ordered and actually constructed. This is the hearing to confirm the final assessment roll and the assessment levied against the individual owner's property. (RCW 35.44.070-35.44.120) Lawsuits by property owners are normally filed after the hearing to confirm the final assessment roll. Because lawsuits challenging the formation of a local improvement district are rare, these materials will concentrate on steps to be taken to confirm successfully the final assessment roll.

The Formation Hearing

There are a number of attributes of the formation hearing which should be kept in mind by city officials. The participants in a hearing to form an LID should remember that the majority of the decisions to be made at such a hearing are ones with which our courts are reluctant to interfere. Under our LID laws, in the absence of fraud or bad faith, a judge is required to defer to the city council with respect to items which fall within its legislative judgment, such as the necessity of the improvements, the character of the improvements and design, the location of the improvements, the boundaries of the LID, the cost of the improvements, and the city's contribution to the cost of the improvements. Each of these matters involves discretionary, legislative acts of the city council with which a court may not interfere.

Any arguments concerning special assessments, whether as to their validity or amount, can only be raised at the subsequent hearing on the assessment roll. This includes any arguments as to whether benefits conferred by the contemplated improvement will be special or general. *Citizens for Underground Equality v. Seattle*, 6 Wn. App. 388, 492 P.2d 1071 (1972). It is for these reasons that lawsuits challenging the formation of an LID are less common and less successful than lawsuits challenging final assessments. So long as the city and its employees take steps to comply with the statutory requirements necessary to form an LID, the chances of a successful challenge to the formation of an LID are remote.

The courts have invalidated the formation of an LID where a municipality attempted to dilute the power of property owners to prevent or protest out the formation of an LID. Thus, where certain property owners within an LID are otherwise legally obligated to construct some or all of the proposed LID improvements, their "vote" should not be considered when determining whether the 60 percent protest level (which would divest the municipality of its power to proceed with the LID improvements) has been reached. *Kasper v. Edmonds*, 69 Wn.2d 799, 420 P.2d 346 (1966); *Esping v. Pesicka*, 19 Wn. App. 646, 577 P.2d 152 (1978). The courts are loathe to let the limited voice of property owners in LID proceedings be impinged upon:

The formation of ULID's is under the control of the landowners only at the initiation stage. Landowners can force the commission into adopting a resolution to form a ULID by using the petition method, or they can prevent the commissioners from forming a ULID by using the protest procedure. Once a resolution of intent has been validly passed and no protest has been successful, however, landowner control over whether a ULID is formed is effectively at an end. If the commissioners are permitted to exclude land from the calculations necessary to determine if the requisite number of landowners have signed a petition for formation of a ULID, they can seriously lessen the ability of landowners to control whether or not a ULID, for which they may be assessed, will be formed. [*Schmitt v. Cape George Sewer District No. 1*, 61 Wn. App. 1, 6, 809 P.2d 217 (1991)].

If the city staff carefully follows the statutory prerequisites to formation, the primary concern of the city council should be the adoption of a plan and policy for the conduct of the formation hearing. City officials and employees must recognize that an LID hearing is a special proceeding, the format of which may be completely dictated and controlled by the city. This aspect of LID hearings is discussed in greater detail under "Final Assessment Roll Hearing" on the following page.

The formation hearing differs in one fundamental way from the final assessment roll hearing. Because the first hearing is for the purpose of deciding the basic question of whether to form the LID, the city should permit all parties to present fully their views on the LID formation. The city

council should, therefore, have all available information. After the LID is formed, any expenditures already incurred will either be assessed against the LID properties, if the LID is carried forward and the LID project is constructed, or paid for by city funds, if the LID is halted, for whatever reason. Therefore, once an LID is formed, the LID assessments should either be levied before the project is initiated or be levied after the project is completed.

Local improvement districts are almost always controversial. Some property owners within the LID will object to its formation and will object to the LID assessment. If an LID is formed by the resolution method, property owners may divest the city of its power to proceed. (RCW 35.43.180) they can do this by gathering protests signed by the owners of property within the LID who are subject to 60 percent or more of the total costs of the LID improvements. The city council should be prepared, however, to deal with an LID in which 59 percent or 50 percent or even 40 percent of the property owners in the LID have protested. It is helpful to have a study session before going into the formation process to adopt a policy to deal with protests which do not reach the statutory minimum.

The adoption of a policy with regard to the acceptance of protests is only one of a number of policies which should be adopted by the city when it is dealing with LIDs. As discussed more fully below, policies should be adopted for city staff interaction with property owners, language in the notice that exceeds minimum statutory requirements, handling of public records requests, adoption of a hearing agenda, etc. These considerations are dealt with in the following section.

The Final Assessment Roll Hearing

1. The Property Owner's Day in Court – Preliminary Considerations

A. The Record – Looking Toward Appeal

In order to know what steps must be taken in conjunction with the final assessment roll hearing, it is essential to have a basic understanding of the manner in which our courts evaluate an assessment roll appeal. Some of these basic considerations are listed below.

When a Superior Court judge is assigned the task of evaluating an assessment appeal, he or she engages in a different task than when a regular civil or criminal trial is conducted. Usually, when a judge is in trial, he or she is called upon to listen to witnesses, evaluate the contents of documents, and engage in a general fact finding search. At the conclusion of the trial the judge may be required to enter findings of fact and make conclusions of law based upon those facts. In such trials the judge is the primary decision maker with respect to any disputed facts. However, the judge's role in an assessment appeal is entirely different.

The appeal from the confirmation of an assessment for local improvements is a special right created by statute. Since assessment appeals are special in nature, they are governed by a number of specific rules of law and presumptions.

From the perspective of those participating in the final assessment roll hearing the most important rules to keep in mind relate to the scope and standard of review that is used by a judge if an assessment appeal is filed. The most important case dealing with these matter is *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 576 P.2d 888 (1978).

In an assessment appeal, the judge must confine his or her review to the action taken by the city council, rather than viewing the assessments *de novo* or making an independent decision regarding the most desirable method of assessment. The judge should consider the information and evidence presented to the city council and determine whether the action of the council is supported. "Review, therefore, is limited to the record of the proceedings before the municipality." *Abbenhaus v. City of Yakima*, 89 Wn.2d at 859. The court in *Abbenhaus* summarized the scope of review on appeal as follows:

Review under the statutory standards should not be an independent consideration of the merits of the issue but rather a consideration and evaluation of the decision making process. Upon appeal, only the record of the prior proceedings is considered. Further, this result requires complaining parties to place all relevant information and objections before the proper decision making body, the council, prior to the municipality's decision, instead of permitting later attack in the superior court based upon information which the municipality did not have the opportunity to consider. [*Abbenhaus v. City of Yakima*, 89 Wn.2d at 859-60.]

Since the scope of appeal (that is, the matters which the judge may consider) is limited, the standard of review used by the judge is also strictly limited. A judge may only reverse or modify the decision of the council if he or she determines, based upon the information contained in the record before the city council, that the council's decision was either "arbitrary or capricious" or made upon a "fundamentally wrong basis."

The term "arbitrary and capricious" has a well-established meaning in Washington State.

It refers to willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. [*Abbenhaus v. City of Yakima*, 89 Wn.2d at 858-59.]

Whether property assessed for special improvements is specially benefitted by those improvements is a question of fact. Thus, under the arbitrary and capricious standard, a conflict in the facts presented to the council relating to special benefits should result in the confirmation of the final assessment if the assessment is appealed.

The basis for this rule is explained in *In re Elliott Avenue and Milwaukee Street*, 54 Wash. 297, 298, 103 P. 20 (1909):

The first assignment of error in this case is based upon the facts, and depends upon whether the assessments were too high or not. This is largely a matter of opinion. In this class of cases we said, in *In re Seattle*, 50 Wash. 402, 97 P. 444, "opinions will differ widely $\frac{1}{4}$ as to the benefits to accrue to the different properties within the districts; but this court cannot substitute its judgment for the judgment of those whom the law has charged with a duty of establishing the district and apportioning the cost, whenever such difference of opinion may arise." Opinions do differ in this case between the commissioners who made the assessment and the witnesses called by the appellants. As seen above, the evidence in this case is conflicting. It fails to convince us that the assessments upon the appellant's lots were excessive or unjust. The order appealed from must therefore be affirmed.

The term “fundamentally wrong basis” has a less well established meaning.

[It] refers to some error in the method of assessment or in the procedures used by the municipality, the nature of which is so fundamental as to necessitate a nullification of the entire LID, as opposed to a modification of assessment as to particular property. [*Abbenhaus v. City of Yakima*, 89 Wn.2d at 859.]

If a fundamental error is found to exist, however, the judge is limited to nullification or modification only of those assessments which have actually been appealed.

Thus, under the scope and standard of review dictated by our LID laws, a judge must determine, solely on the basis of the record before the city council, whether the council acted in an arbitrary or capricious manner or proceeded on a fundamentally wrong basis.

The scope and standard of review places a burden at the assessment roll hearing upon both the city and property owners who wish to object to an assessment. Property owners are required:

To place all relevant information and objections before the proper decision-making body, the council, and prior to the municipality's decision, instead of permitting later attack in the superior court based upon information which the municipality did not have the opportunity to consider. [*Abbenhaus v. City of Yakima*, 89 Wn.2d at 860.]

Under this rule, if a property owner attempts to establish on appeal that he or she was assessed on a “fundamentally wrong basis,” he or she must be able to do so by reference to information or evidence which he or she presented to the council and which is part of the transcript on appeal. The property owner cannot bring in any new witnesses, documents, or any other evidence to try to substantiate his or her objections to an assessment. If a property owner has failed to support his or her objections to an assessment by placing relevant evidence before the city, the assessment should be confirmed by the judge on appeal.

Likewise, it is important that the participants from the city in the assessment roll hearing recognize that a judge will be reviewing the evidence that the city presents to the city council. In other words, all participants in the final assessment roll hearing on behalf of a city should be thinking in terms of what a judge should see when confronted with a property owner's assessment appeal. The city is also limited on appeal to the record which is made before the city council and it, too, cannot count upon calling additional witnesses or presenting additional information or evidence.

B. The Assessment Roll Hearing is a “Trial” and the City Council Members are the “Judges”

Since on an assessment appeal the Superior Court judge is restricted to consideration of the documents and evidence contained in the record of the proceedings before the city council, the final assessment roll hearing must be approached as a “trial” by all participants. The final assessment roll hearing has been referred to by one court as “the property owner's day in court, so to speak, and the penalty, upon his failure to so appear, is that he waives objections or the right to an independent suit in equity.” *In re Grandview*, 118 Wash. 464, 467, 203 P. 988 (1922).

If the final assessment roll hearing is conceived of as the property owner's day in court, then it is appropriate to think of the members of the city council as the judges or triers of fact. The council sits as a board of equalization to consider the evidence and information presented and to determine whether to confirm the assessment roll as proposed by the city staff. The city's participants should think of the hearing as being fundamentally different from the council's usual meetings. Ordinarily, the council members are acting solely as public servants, responding to the wishes of their constituents. When work is done under a LID, however, the city acts as an agency of the state. The council acts as the agent of the law, both in the letting of the contract for the improvements and in the levying of the assessments. *Malette v. City of Spokane*, 77 Wash. 205, 137 P. 496 (1913). In confirming the final assessment roll, the council members act as judges whose purpose it is to weigh the information and evidence presented before confirming, modifying, or refusing to confirm the final assessment roll.

C. The Five Presumptions – What Could Possibly Go Wrong?

Many city employees and council members approach the final assessment roll hearing with trepidation. Employees are concerned not only with how their council members may react to actions taken on the LID, but also whether a property owner will be represented by an attorney who will subject them to undue scrutiny. Council members are often concerned with property owners who are angry with their assessments and are threatening legal or political action. It is important that all city employees and officers understand that the law provides them with a number of aids to protect the validity of the final assessment roll. The limited standard and scope of review discussed above are two of those aids. By prohibiting a judge from making an independent factual inquiry, the statutes are designed to preclude second guessing. Another valuable aid at the Superior Court level is a series of presumptions favoring the validity of the city's actions. These presumptions play a major role in determining whether a city has acted in an arbitrary or capricious manner or proceeded on a fundamentally wrong basis. These presumptions further the clear public policy favorable to the construction and financing of local improvements. There are five specific presumptions applicable in Washington on an appeal from a special assessment.

First, since the construction and financing of local improvements is favored under the law, there is a strong judicial presumption that the city has acted legally and properly. This places the burden of proof upon the property owner challenging an assessment to establish that it was not correct. Second, if an issue is raised whether an improvement benefits property within the LID, it must be presumed that the improvement specially benefitted the affected property. Third, when a judge addresses the issue whether an assessment exceeds the amount of special benefits conferred by an improvement, the court is aided by the presumption that an assessment is no greater than the benefit. Fourth, if an issue is raised whether the property of those challenging assessments has been assessed proportionately in relation to other parcels throughout the LID, a judge must presume that an assessment is equal or ratable to an assessment upon other property similarly situated. Fifth, there is a catch-all general presumption when an assessment is challenged that it is fair. See *Abbenhaus v. City of Yakima*, 89 Wn.2d at 861.

It is helpful to analogize the presumptions which favor a municipality in an LID to the presumption of innocence to which everyone charged of a crime is entitled. Here, a city's actions with regard to an LID are presumed correct until proven otherwise.

D. The Two Absolutes: Assessments Cannot Exceed Benefits and Assessments Must be Proportionate

As shown above, all aspects of the proceedings associated with the confirmation of the final assessment roll are biased in favor of the city. In addition, our LID statutes provide that if errors in procedure are made during the course of the proceedings to confirm the final assessment roll, the city may levy a reassessment to correct those errors. In theory, with the two exceptions discussed below, any error made by the city during the assessment process, be it one of neglecting to provide notice of the final assessment roll hearing, or letting contracts improperly, or in executing the work improperly, or in neglecting to comply with any other law, may be “fixed” by conducting a reassessment hearing. The only two absolutes with which the city must concern itself are:

- (1) Has the property which is being assessed received benefits commensurate with or in excess of the amount of the assessments?
- (2) Has the property in the LID been assessed proportionately in relation to other parcels throughout the LID?

The paramount concern of a city in proceeding with an LID and in adopting an assessment method should be the issue of special benefits. It is fundamental to assessment proceedings that:

Property not benefitted by local improvements may not be assessed, and special assessments for special benefits cannot substantially exceed the amount of the special benefit. [*In re Schmitz*, 44 Wn.2d 429, 433, 268 P.2d 436 (1954).]

The requirement that property be specially benefitted by the improvements constructed in at least the amount of the assessment is an absolute.

If there is no benefit, there can be no assessment. To hold otherwise would be to deprive the owner of property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution. [*Heavens v. King County Rural Library District*, 66 Wn.2d 558, 564, 404 P.2d 453 (1965).]

What are “special benefits”? Special benefits refer to special, as opposed to general, benefits conferred upon property by the improvements which are constructed. In other words, special benefits are those derived from the improvements which are substantially more intense to the property which is assessed than to the rest of the municipality. See *Heavens v. King County Rural Library District*, 66 Wn.2d at 563.

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.]

The distinction between public improvements which are local in character, as opposed to general, is explained in another case:

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 benefitted 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, *Municipal Corporations* § 38.11 (3d ed. 1987)]

The importance of measuring special benefits is far reaching and will be discussed more fully below.

Issues relating to proportionality are raised far less frequently than special benefit questions. Although it is sometimes difficult to apply, the rule of law may be simply stated: each parcel in an improvement district may only be assessed "its proportionate share in relation to other parcels throughout the improvement district." *Sterling Realty Company v. City of Bellevue*, 68 Wn.2d 760, 765, 415 P.2d 627 (1966). In other words, like properties should receive like assessments.

If staff and council keep the two absolutes of special benefit and proportionality in mind when confirming a final assessment roll, the chance of a court overturning an assessment is substantially reduced.

2. Pre-Presentation Considerations and Mechanics

A. Attitude – Cooperative and Adversarial

The employees of a city who are involved in the presentation of an assessment roll are placed in an awkward position. On the one hand they are called upon to serve as public servants whose role it is to provide assistance and guidance to members of their community in their dealings with the city. On the other hand, these same employees are charged with the task of being proponents of a project and, therefore, the adversaries of those property owners who oppose the LID or the assessments which are to be levied. There is no way to resolve this conflict. It is helpful, however, for staff and council to recognize the dual nature of the role of the City employees. Judges do not look kindly upon employees of a city who have not been forthright with citizens seeking information or assistance. Likewise, council members are not pleased when an assessment is lost and the money must be made up from a different source rather than being charged to the property which has benefitted from the improvement.

The only way to deal with this conflict is to recognize the dual role and to reach some accommodation. Each city will have to set its own policies with regard to dealing with property owners within an LID. Some cities only provide information which is directly requested and will volunteer nothing. Other cities advise the affected property owners

of every aspect of an LID, including legal rights and the impact of the LID statutes. Each city should consult with its attorney and adopt a policy with regard to the disclosures which the city wishes to make with respect to its LID proceedings.

B. Notice – Beyond the Statutes

The statutes for LIDs require notice of the hearing to confirm the final assessment roll be sent to property owners in advance of the final assessment roll hearing. At a minimum, the notice must conform to the requirements of the statutes. However, the city may give a more detailed notice. For example, a recurring issue on Superior Court assessment appeals by property owners who did not present evidence at the final assessment roll hearing is that the city failed to advise them of the absolute necessity to make a record. Because this issue has arisen on a number of occasions, many cities now advise the property owners in the notice of the hearing to confirm the final assessment roll that the owners must present their protests, together with whatever information or evidence which they wish the council to consider. This type of more detailed notice helps blunt the property owner's attack in court, yet, at the same time, does not give the property owner all of the information needed to successfully challenge an assessment. Other cities choose to provide complete notice of the procedure to be used by a property owner not only at the assessment roll hearing itself, but also the manner of contesting the assessment in the Superior Court. Again, this is simply a policy decision to be decided upon by each city council.

C. Public Records Requests

Cities are frequently presented with requests to provide copies of public documents relating to LIDs or RIDs. There is nothing in the LID statutes which provides special protection for public documents relating to the LID. When a request for such public records is made, the response should be the same as in any other situation. If anything, because of the tight time constraints for the final assessment roll hearing, the employees of a city should make an extra effort to comply with the public records request so that the property owner cannot claim in court that he or she was prejudiced by the slow response of the city in providing documents which had been legitimately requested. Again, this is a matter which should be governed by city council policy.

D. Arranging for Transcription

Since a judge is restricted to the record of the proceedings before the city in his or her consideration of an assessment appeal, the city must be prepared to compile an accurate record of the proceedings before the council. While the law is not completely settled on the subject, it is advisable that the city be prepared to provide a verbatim transcript of the final assessment roll hearing itself. This can be done by having the hearing tape recorded and transcribed by city employees. This process can be laborious and time consuming and rarely produces a fully satisfactory transcript. It is much better to arrange to have a court reporter appear at the final assessment roll hearing and take down what is said verbatim. Court reporters are trained to take down every word that is said and to attribute it to the proper speaker. The cost of having a court reporter appear is usually nominal compared to the total cost of the LID. If no property owner files an appeal the hearing will not need to be transcribed. If an appeal is filed a court reporter can usually provide a transcript within a matter of days and the city can charge the property owners for the transcript on a per page basis along with the other documents constituting the record before the council. Moreover, the transcript provided by a court reporter is usually more

accurate and can be created rapidly enough to permit the city to comply promptly with its statutory obligations to provide a complete record. Lastly, the cost of a court reporter is properly included in the total costs of the improvement district to be assessed against the properties within the district.

E. Appearance of Fairness

The “appearance of fairness doctrine” is frequently raised at assessment roll hearings. For this reason, the persons conducting the final assessment roll hearing should be attuned to providing a procedure which is not only fair in form, but also *appears* fair. Likewise, it is advisable to ask any council member with a real or apparent conflict to excuse him or herself from participation in the final assessment roll hearing. If there is any doubt, it is better to err on the side of withdrawal from the proceedings. Since the assessment roll proceedings are weighted against the property owner, it is prudent to avoid any situation which might give a judge an excuse to invalidate an assessment.

At the final assessment hearing, the chairperson should ask if any property owners have any objection for whatever reason to the participation of any person in the final assessment roll hearing. If such an objection is raised it can be dealt with at the time. If no objection is raised but a property owner knows of a basis for objecting to the participation of someone in the final assessment roll hearing, any such objection will be deemed to have been waived.

3. Making Your Presentation

A. The Hearing Agenda: Fair, Open, Impartial and Structured

As noted above, the final assessment roll hearing is really a “trial” on the issues of special benefits and proportionality. The council members act as “judges” relating to the nature of the project, its costs, and the manner in which the assessments were computed. Even though the final assessment roll hearing has certain attributes of a trial, it does not have the formality of a trial in Superior Court. It has been held that the LID statutes contemplate that the proceedings before the council will be informal and that a property owner's objection or protest will not be measured by technical rules of pleading. See *Real Estate Investment Company v. City of Spokane*, 59 Wash. 416, 419, 109 P. 1057 (1910).

The procedures surrounding an LID contemplate substantial public, as opposed to representative, participation. Since one of the primary aims of the city is to conduct proceedings which will not be subject to challenge in court, it is important that the final assessment roll hearing be fair, open, and impartial. This does not mean, however, that the final assessment roll hearing cannot be structured. In fact, it is advisable to adopt an agenda and script for the final assessment roll hearing which will insure that the city's viewpoint will be fully aired. The city should determine in advance who will speak on behalf of the staff with regard to the nature and scope of the improvements and the work performed, the method of computing assessments and spreading the costs of the project, the special assessment process, the form of permanent financing to be used, and any other information which the city decides a judge may want to consider. It is also advisable for the council to adopt procedures for the presentation of the property owner's protest and evidence. The order of presenting protests, the manner of receiving documents or other evidence, and the time given persons to speak should be decided upon in advance. The adoption of a formal procedure by the city council will make for a more orderly proceeding and one which will be more readily understood by a judge.

B. Rules of Evidence

No formal rules of evidence apply to a hearing to confirm the final assessment roll. In keeping with the notion that the city should do all that it can to avoid giving a judge an excuse to overturn an assessment, the council should err on the side of accepting any relevant information or evidence offered by a property owner.

C. Premarked Exhibits

The proponents of the final assessment roll on behalf of the city, in keeping with their role as the assessment roll “lawyers”, should decide in advance of the hearing what documents, maps, photographs, diagrams, or other aids should be made a part of the record. A judge will not be as familiar with the history and scope of an LID as the city’s employees or officers. Therefore, anything which would assist a judge in understanding the project and the reason that it was built should be made a part of the record. The city employees in charge of making a presentation should coordinate with the city clerk so that a procedure for marking exhibits will be in place for the hearing. The city’s exhibits can then be premarked and made a part of the record more easily at the final assessment roll hearing itself. It is important that the nature of the exhibits be identified at the assessment roll hearing, so that there is no question as to the evidence which the city council has considered.

D. The City’s Witnesses

Just as it is important to consider what exhibits might assist a judge, the city’s employees should carefully consider what person should speak on behalf of the assessment roll. Again, this is a policy decision to be made by the staff itself in consultation with the council.

There are a number of possible witnesses. First, would be the LID administrator. This person could provide a description of the LID, giving its history, purpose, nature, scope and physical details of the improvements, the work which was performed, a summary of the project cost, and the method used to determine the final assessments. Second, an attorney, either the city’s own attorney or special counsel, can be called upon to discuss the special benefit assessment process, the confirmation process, the purpose and conduct of the hearing to confirm the final assessment roll, financing, bonds, collection of assessments, and foreclosure. The underwriter marketing the bonds can be called upon to discuss the role of the underwriter, interim and permanent financing, the current tax exempt interest market, and the sale of bonds. Lastly, the city may wish to provide an opportunity to proponents of the LID. Far too often the final assessment roll hearing is dedicated solely to negative comments from property owners who are dissatisfied with the improvements or their assessments. If the LID administrators aware of persons who are pleased with the project, it is helpful to have these persons speak at the final assessment roll hearing. The existence of positive testimony makes the council members’ job easier politically and also makes it easier for a judge on appeal to feel comfortable in confirming the final assessment roll.

4. The Property Owner’s Presentation

A. Written Protest

Since the hearing before the city council is the main “trial” and the hearing before the

Superior Court is really an “appeal” from that trial, a property owner must participate in that trial before he or she can take an appeal. This principle was established long ago:

No reason is suggested why respondent did not appear and make his objection before the town council. That body had jurisdiction over the subject matter and was clothed with power to arrive at a correct determination. It was the tribunal appointed by the law for the correction of any mistakes or irregularities. The parties interested cannot be permitted to disregard the opportunities so afforded for a hearing, and to select a forum of their own choosing. They must make their objection seasonably, before the tribunal which the law appoints for that purpose, and failing to do so, cannot thereafter be heard to complain. [*Town of Tumwater v. Picks*, 18 Wash. 153, 51 P. 353 (1897)]

The LID statutes provide that a property owner must put his or her protest in writing. The city council has the right to insist upon this. If, however, the council decides to hear the appeal in the absence of a written protest, the statutory requirement that the protest must be in writing will be deemed to have been waived by the council. In re Indian Trail Trunk Sewer System, 35 Wn. App. 212, 666 P.2d 378 (1983). It would be appropriate to have study session with the city attorney to discuss the importance of the written protest and the necessity for filing a written protest.

B. The Property Owner's Burden of Proof

The presumptions discussed above, which favor the city's action, place the burden directly upon the property owner to produce information or evidence to show that his or her final assessment is either excessive, disproportionate, or the product of proceedings conducted by the city of a fundamentally wrong basis. A challenge to an assessment that is based upon special benefits will usually require the testimony of an appraiser. Since the determination of the amount of special benefits requires before and after market analyses of property, this is not an area in which most property owners will have sufficient expertise. If a property owner wishes to prove in court that his or her assessment is excessive, he or she is required to demonstrate that he or she offered before and after market value testimony to the city at the hearing to confirm the final assessment roll. *Abbenhaus v. City of Yakima*, 89 Wn.2d at 861.

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)]

If a property owner fails to support his or her objection to an assessment by placing relevant evidence before the city council, the assessment should be confirmed by a judge on appeal.

Except with regard to the issue of special benefits, the evidence which a property owner will be required to place in the record before the council will vary with the type of objection raised. The role of the city employees is to evaluate the evidence which is produced at the final assessment roll hearing and determine what evidence raises a significant question. Such items should be noted and responded to by the city.

C. Right of Cross-Examination

In addition to having the right to produce his or her own testimony and documentary evidence, the property owner has a right to cross-examine any person who provides information or evidence in support of the final assessment roll. If a property owner asks, this right should be freely given.

5. Rebuttal

A. When Presumptions Vanish

As noted above, there are a number of presumptions which favor the actions of a city in levying assessments. These presumptions are not absolute or set in stone, however. Even though the city council members take the role of judge and sit as fact finders and have the right to weigh evidence provided by a property owner, they cannot rely exclusively upon presumptions in the face of property owner evidence. A presumption itself is not evidence and its power is lost when the opposing party produces credible evidence which contradicts the presumption. As one court has stated, "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 System*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983). The sole purpose of the presumptions is to establish which party has the burden of going forward with the evidence on a particular issue. Because of the five basic presumptions, the burden of going forward with evidence rest initially on those persons attacking an assessment. Once evidence is produced, however, the ultimate burden of showing that land within an LID is benefitted remains with the city. Therefore, when a property owner produces evidence from which a reasonable person could conclude that an assessment is erroneous in any respect, the city must be prepared to rebut that evidence. Otherwise, the property owner will probably prevail in the event of an appeal.

B. The Appraiser

By far the most common issue raised at assessment roll hearings is whether the property in question is specially benefitted by the improvements. As noted above, whether property is specially benefitted by an improvement and the extent of the benefit are questions of fact to be proved by expert testimony. In *re Indian Trunk Sewer System*, 35 Wn. App. at 842. Property owners who have sought the advice of lawyers will appear at the assessment roll hearing with an appraiser prepared to testify that there is no difference between the fair market value of the property before the improvements were installed and after the improvements were installed. If the city receives this kind of testimony, it is imperative to retain the service of a qualified appraiser to appraise the property. If the city does not already have an appraiser working with it in conjunction with the LID, it should adjourn the assessment hearing and reconvene at a time when an appraisal study can be presented. This is an example of the city using to its own advantage its power to control the manner and time of the hearing. If a hearing is adjourned or continued, the city must remember to comply with the requirements of the Open Public Meetings Act.

C. The LID Administrator or Engineer

With the exception of the appraiser, the most common person to testify on behalf of the city in rebuttal to evidence produced by the property owner is the LID administrator. When specific challenges are raised with regard to the nature of the improvements, the

way the contracts were let, the final cost assessed, or the method of computing the assessments, the administrator or engineer should be called upon to provide documentary and oral evidence showing why the actions which were taken were reasonable and the underlying reasons for such actions.

6. Concluding the Hearing

A. Council Debate

As noted above, a judge will evaluate the evidence of record to determine whether the council was arbitrary and capricious or proceeded on a fundamentally wrong basis. Usually, the judge will be concerned with the arbitrary and capricious standard. He or she will be evaluating the record to determine whether there was willful and unreasoning action taken without regard or consideration of the facts and circumstances surrounding the challenged assessment. In this regard it is helpful to have the city council debate the evidence. If the judge sees that the matters which were presented are actually addressed by the council and discussed, he or she will be far less likely to interfere with the determination of the council members. This is another aspect of the final assessment roll hearing which should be governed by a policy established in advance of the hearing.

B. Findings and Conclusions

The LID statutes do not specifically require the city council to adopt findings of fact and conclusions of law with respect to the confirmation of the final assessment roll. However, our courts in the past have engaged in a steady process of analogizing zoning law to LID law. It is now established that findings of fact and conclusions of law are required with respect to zoning decisions. See *Parkridge v. City of Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978). This does not mean that the findings and conclusions must have the formality expected of a court pleading. It is helpful, however, on an assessment appeal to be able to refer to specific facts found by the city council and the conclusions drawn therefrom. This is a matter which should be discussed by the attorney used by the city to advise it during the final assessment process.

C. Appeal Transcript

Despite a city's best efforts to inform property owners and to build a record which is unassailable on appeal, it is inevitable that a property owner will, nevertheless, file an appeal. The LID statutes impose certain requirements upon the property owner to perfect that appeal in the Superior Court in a speedy and timely fashion. This is another area in which the city should bend over backwards to comply as soon as possible with any requests made by a property owner in conjunction with that appeal. Therefore, if the employees of the city suspect that an appeal is going to be taken, steps should be taken to order the verbatim transcript from the court reporter and to assemble all documents which have been made exhibits at the final assessment roll hearing. In this way, as soon as the property owner requests certification from the city clerk of the transcript on the proceedings before the council, that appeal transcript can be supplied. If the property owner does not substantially comply with the requirements to perfect his or her appeal, the city can bring a motion to have the appeal dismissed entirely. It is surprising how often this occurs.

Conclusion

It is essential that employees and officials of a city understand fully the basic premises underlying special assessments and the manner in which a judge evaluates assessment proceedings. With this understanding the city can take a number of steps to build its own record in support of its actions and to blunt property owner challenges which might otherwise be successful. The key to winning assessment appeals is the preparation done by the city before the case is handed to the lawyer who is assigned to represent the city in court. If the city's employees and officials have performed their jobs, the lawyer's job is a simple and much less expensive undertaking.

Use of Hearings Examiner

During the last 25 years, the use of hearings examiners for a variety of purposes, mostly relating to land use planning in the state of Washington has become commonplace. Most large cities and counties use the services of a land use hearings examiner (RCW 36.70.970 - counties, RCW 35.63.130 and 35A.63.170 - cities). Passage of the Growth Management Act (RCW Chapter 36.70A) and the Land Use Regulatory Reform Act (RCW Chapter 36.70C) have enhanced the position of a hearings examiner. Use of a hearings examiner results in land use decisions that are based on the facts of a case and the applicable law and not on political considerations. Less common is the use of hearing examiners for LIDs, but the option is available to busy elected officials.

As part of the administrative processing of LIDs, cities can use the services of a hearings examiner. RCW 35.43.140 specifically allows a hearings examiner to be appointed for the purpose of conducting an LID formation hearing and an LID assessment roll hearing. The hearings are quasi-judicial in nature and the hearings examiner is under a legal responsibility to ensure due process for all participating in the process.

The hearings examiner is responsible for providing city councils with information necessary to assist them in the formation of the LID or the establishment of the assessment roll. The function of the hearings examiner is to provide councils with facts and applicable law that is understandable and accurate.

In conducting LID hearings, the hearings examiner must control the tenor of the hearing. This requires that the hearing be fair and that the hearings examiner's behavior and interest be above reproach. It also requires that adequate notice, pursuant to local ordinances and State statutes, be given in order that all parties have an opportunity to be heard. The purpose of the hearing is to gather necessary factual information needed to apply the law. All decisions must be supported by a complete record and the basis of all decisions must be set forth in Findings of Fact and Conclusions of Law. Decisions must be made pursuant to legal requirements of statutes and local ordinances.

Use of a hearings examiner is beneficial to LID processes because it: (1) depoliticizes the process; (2) provides a neat, concise and accurate record of the specific issues of the LID formation and the assessment roll; and, (3) creates a complete, defensible record during court review. Hearings examiner fees are an eligible administrative cost of the LID.

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Chapter 7 RIDs

Introduction

Counties in Washington State can utilize LIDs for water, sewer and storm sewer system improvements under Chapter 36.94 RCW. Procedures under that statute are very similar to LID procedures in cities and towns under Chapters 35.43-50 RCW and the material in the first six chapters of this manual are generally applicable to water, sewer and storm sewer LIDs in Counties.

Assessment districts for road improvement projects in counties however, must follow the RID procedures under Chapter 36.88 RCW, warranting a separate chapter in this manual. While RIDs operate under a separate state statute, they differ only somewhat from the provisions and procedures for LIDs in cities and towns. Therefore the preceding six chapters, especially the details in Chapter 3, are very helpful resources for the RID process and should be used in conjunction with this RID chapter. This chapter attempts to highlight some of the items unique to RIDs.

Road improvement projects under the RID statute obviously include paving. However, the law goes on to include several other types of improvement. RCW 36.88.010 and RCW 36.88.015 give counties the power to:

“... create county road improvement districts for the acquisition of rights of way and improvement of county roads, existing private roads that will become county roads as a result of this improvement district process and, with the approval of the state department of transportation, state highways; for the construction or improvement of necessary drainage facilities, bulkheads, retaining walls, and other appurtenances therefor, bridges, culverts, sidewalks, curbs and gutters, escalators, or moving sidewalks; and for the draining or filling of drainage potholes or swamps.”

and

“... create county road improvement districts for the construction, installation, improvement, operation, and maintenance of street and road lighting systems for any county roads, and subject to the approval of the state department of transportation, for state highways, and for safeguards to protect the public from hazards of open canals, flumes, or ditches, ...”.

Much of the material in this chapter is adapted from Spokane County documents and the county's RID process. A complete set of Spokane County documents in electronic form is available (see appendix for listing). Spokane County's RID work is mostly upgrading of gravel roads to pavement with associated improvements to drainage facilities. Virtually all RIDs have been for public roads, though they have in a few instances used the process to improve private roads before taking them into the public system.

The county has extensive experience with RIDs, with the first RID in October 1955. Since then, over 700 RID projects have been attempted, with nearly 550 successfully completed. The vast majority were in the urbanized areas of the county. However, emphasis has now shifted to the rural areas where nearly 1,200 miles of gravel roadways remain.

The creation method most commonly used by Spokane County in the recent past has been the resolution of intention – ballot method. It offers owners a much more inclusive, interactive, hands-on opportunity in the decision making process. The county also has an extensive history using the petition method. However the success rate has been higher using the ballot method. The resolution of intention – protest method has been used very seldom. It’s not a good public relations tool when working with owners and neighborhoods. From the beginning of the process, it presents a confrontational climate.

Spokane County spends a significant portion of the RID process in pre-formation activities related to public education and participation. Included are personal contacts, neighborhood meetings, detailed meeting summaries mailed to all owners, and periodic updates also mailed to owners (see appendix for some examples). While outside the mandatory statutes, the extensive public participation element generally helps the legal process move smoothly and minimizes owner misunderstandings and confrontations. That participation process has contributed to greater owner election turnout as well as the overall success rate of Spokane County’s RID program.

Formation Procedures

Two methods of RID formation are authorized by the statutes (RCW 36.88.020):

1. Resolution of Intention method.
2. Petition method.

In addition under the Resolution of Intention method, the county commissioners may opt to use either ballots or protest procedures, as explained below.

Summary of Road Improvement District (RID) Formation Methods

Method	Resolution of Intention		Petition (Section 36.88.050 RCW)
	Ballot (Section 36.88.030-040 RCW)	Protest (Chapter 35.43 RCW)	
Initiated By	Commissioners	Commissioners	Property owners
Ballot Criteria	Board may form RID if majority of votes cast are in favor. (One vote for each \$ of estimated assessment.)	N/A	N/A
Protest Criteria	N/A	Board may not form RID if protests representing more than 60 percent of total estimated improvement costs (assessments) are received.	N/A

Method	Resolution of Intention		Petition (Section 36.88.050 RCW)
	Ballot (Section 36.88.030-040 RCW)	Protest (Chapter 35.43 RCW)	
Petition Sufficiency	N/A	N/A	Majority of owners, by both road frontage and area, must sign petition.
Resolution of Intention to Create District	Board of Commissioners adopts.	Board of Commissioners adopts.	Board of Commissioners adopts after determining petition sufficiency and that property in proposed district is 'sufficiently developed'...
Notification to Property Owners	Required; mailed at least 15 days prior to public hearing date; notice is to owner or reputed owner as shown on tax rolls of county treasurer.	Required; mailed at least 15 days prior to public hearing date; notice is to owner or reputed owner as shown on tax rolls of county treasurer.	Required; mailed at least 15 days prior to public hearing date; notice is to owner or reputed owner as shown on tax rolls of county treasurer.
Notice to Contain (Sections 36.88.030 and .050 RCW) (non-exclusive list)	<input type="checkbox"/> Refer to the Resolution of Intention <input type="checkbox"/> Identify the proposed RID by number <input type="checkbox"/> Nature of the proposed improvement <input type="checkbox"/> Total estimated cost <input type="checkbox"/> Proportion of total cost to be borne by assessments <input type="checkbox"/> Estimated assessment for the individual parcel <input type="checkbox"/> Date, time, place of hearing <input type="checkbox"/> Statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property (Section 36.88.035 RCW) <input type="checkbox"/> Directions for voting and election rules	<input type="checkbox"/> Refer to the Resolution of Intention <input type="checkbox"/> Identify the proposed RID by number <input type="checkbox"/> Nature of the proposed improvement <input type="checkbox"/> Total estimated cost <input type="checkbox"/> Proportion of total cost to be borne by assessments <input type="checkbox"/> Estimated assessment for the individual parcel <input type="checkbox"/> Date, time, place of hearing <input type="checkbox"/> Statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property (Section 36.88.035 RCW)	<input type="checkbox"/> Refer to the Resolution of Intention <input type="checkbox"/> Identify the proposed RID by number <input type="checkbox"/> Nature of the proposed improvement <input type="checkbox"/> Total estimated cost <input type="checkbox"/> Proportion of total cost to be borne by assessments <input type="checkbox"/> Estimated assessment for the individual parcel <input type="checkbox"/> Date, time, place of hearing <input type="checkbox"/> Statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property (Section 36.88.035 RCW) <input type="checkbox"/> Statement that property owners may withdraw or add their names on the petition at any time prior to 5 pm of the day before the hearing

Method	Resolution of Intention		Petition (Section 36.88.050 RCW)
	Ballot (Section 36.88.030-040 RCW)	Protest (Chapter 35.43 RCW)	
Public Hearing	Required; no sooner than 15 days after first publication in official newspaper.	Required; no sooner than 15 days after first publication in official newspaper.	Required; no sooner than 15 days after first publication in official newspaper.
Resolution to Create District	Public hearing is continued to date not more than 15 days after ballot deadline. Decision to create or reject is based on balloting results.	Resolution to create district can be passed at or after hearing.	Resolution to create district can be passed at or after hearing, unless petition is deemed insufficient.
Time Constraints	Ballots must be returned to the clerk by 5:00 p.m. of the day one week after the public hearing date. Continued hearing must occur within 15 days of the ballot deadline.	After adoption of resolution to create district, property owners have a 30-day period during which they may protest district formation.	Property owners may add or delete names from the petition until 5 pm on the day before the hearing.
District is Formed	Resolution to create district can be passed at continued hearing.	District is created after protest period ends, if valid protest not filed.	District can be created after hearing.

Resolution of Intention – Ballot

Under this procedure (see RCW 36.88.030-.040), the board of county commissioners adopts a resolution which states its intention to proceed with formation of an RID. Within the resolution, the Board sets a date, time, and place for a public hearing to consider forming the RID. The Board directs that a notice of the hearing be sent to those who own property within the boundary of the proposed district along with an estimated project cost and the estimated assessments.

A copy of the Resolution of Intention, a ballot, a ballot return envelope, and election instructions are all included as part of the mailing. (Ballots need to be included in this mailing due to statutory time limits for voting to be completed within 7 days of the hearing) The entire notification packet is mailed to property owners at least fifteen days prior to the date of the public hearing. The resolution of intention is also published in at least two consecutive issues of a newspaper of general circulation in the county, the date of the first publication to be at least fifteen days prior to the hearing date.

The board of county commissioners conducts the public hearing and takes both oral and written testimony regarding district formation. The board then decides if the district is feasible. If the Board finds it to be feasible, they will so state in a resolution and direct the clerk of the board to proceed with the election. If the board cannot find the RID to be feasible, then they can adopt a resolution so stating and terminate all further proceedings in conjunction with the RID. If the proposed RID is found to be feasible, then the public hearing is continued for the purpose of obtaining election results. The continuance is to a date specific, which must be not more than 15 days after the election deadline.

Property owners have until one week after the hearing, at which the feasibility of the project was declared, to return their ballots to the clerk of the board. Ballots not received by 5:00 p.m. by the

clerk on the seventh day following the hearing are not opened or counted, although it is a good practice to keep the unopened ballots for the record.

The outcome of the election is determined by a simple majority of the votes cast. Each property owner has one vote for each full dollar of estimated assessment. For example, a person who receives an estimated assessment of \$3,129.85 will have 3,129 votes. The ballots are opened and counted by the clerk of the board. Validity of a signature on a ballot is governed by RCW 36.88.370. The clerk certifies the election results to the board of county commissioners at their continued public hearing.

If a majority of the votes cast are in favor of district formation, then the Board may proceed with formation of the RID. They will pass a resolution creating the district and order the county engineer to proceed with construction. If the majority of votes are opposed to the RID, then the board will adopt a resolution terminating the proposed RID and all activities associated with it.

Resolution of Intention – Protest

This method of district formation is authorized by RCW 36.88.065. The law authorizes use of the formation procedures set forth in Chapter 35.43 RCW. The more specific procedures are contained in RCW 35.43.140 thru .180. This method is also employed by cities in the state of Washington. The protest process is nearly identical to the ballot method up to the decision point during the public hearing. Under the protest method, the board of county commissioners adopts a resolution which states its intention to form an RID. They set a date, time, and place for a public hearing. They direct that notice of the public hearing, a copy of the resolution of intention, and the estimated project cost along with the estimated assessment for the property be sent to all owners within the district.

The board holds the public hearing and takes all relevant testimony. It is at this point that the protest process deviates from the ballot method. If the board finds that the district is feasible, they will pass a resolution to form the district. After adoption of this resolution, the property owners are given a 30-day period during which they may write letters protesting district formation. Validity of a signature on a protest is governed by RCW 36.88.370. If protests representing 60 percent of the total estimated improvement cost (assessment) for the district are received the Commissioners may not proceed with the district. The district is divested by protest.

Notice of this opportunity to protest is usually sent with the notice of the public hearing. As a courtesy, the county engineer may also send a reminder to each property owner a couple of days after the public hearing. This reminder notifies them that if they choose to protest, the protest must be received no later than a day which is 30 days after the date of public hearing.

There is no specified format in the RID statute for the written protest and none need be sent. Presumably, individual penned letters would be the norm. However, petitions or form letters arising from an organized opposition may suffice also. If the district is not divested, the Board directs the county engineer to proceed with construction of the project.

Petition

RIDs may be initiated by a petition (RCW 36.88.020) signed by the owners according to the records of the office of the county auditor? To be a valid petition, it must represent a majority by two different tests:

1. of property aggregating a majority of lineal frontage upon the improvement and
2. of a majority of the area within the limits of the proposed RID.

The form of the petition, or who can prepare it, is not addressed in the statute. Typically, staff should prepare the petition to avoid or minimize confusion and legal contentions. The RID staff can prepare the petition and formally deliver it to the sponsor(s) for collection of signatures. In that way, the consistency and accuracy of the petition can be maintained. In addition, it can be prepared in such a fashion that the owner names and other relevant information according to the county auditor's records are included. The validity of signatures on the petition is governed by Section 36.88.370 RCW.

RCW 36.88.050 requires the board of county commissioners to review the petition for sufficiency in relation to RCW 36.88.020 and also to determine whether the property is sufficiently developed. The Board then adopts a resolution of intention, which is processed in a manner very similar to the Resolution of Intention method described previously. EXCEPT that the resolution must contain language that property owners may withdraw their names from the petition or add their names thereto at any time prior to five o'clock p.m. of the day before the hearing.

The hearing proceeds as discussed for the Resolution of Intention method with the goal of determining feasibility. Subsequent to the public hearing and based upon finding, the Board can move to create or terminate the RID.

Hearing Process and Steps to Follow When Creating or Terminating a Proposed RID

The public hearing process leading to the creation (or termination) of an RID is spelled out in RCW 36.88.060. Under that statute, the board of county commissioners must conduct a public hearing on the feasibility of forming the RID. The steps leading up to that hearing are discussed above. The following paragraphs focus on what must occur during and as a result of the hearing.

(As an alternative, RCW 36.88.062 allows the board to adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearings. The committee or hearing officer reports recommendations on the resolution to the full county legislative authority for final action. The legislative authority need not hold a hearing on the proposed assessment roll and shall either adopt or reject the recommendations.)

Generally, staff will present and describe the proposed RID to the Board at the feasibility hearing. If possible, it's also helpful to provide the Board with a written report well in advance of the hearing so that they can be as informed as the owners are likely to be. The Board will consider the proposal as well as all public testimony in determining feasibility.

The feasibility of the proposed RID is at the core of the public hearing that must be held prior to the Board making a decision on forming the RID. At that hearing, the Board must choose an assessment method and "... ascertain whether the plan of improvement or construction is feasible." There is really no precise definition of what 'feasible' is. However, the portion of the sentence following the above statement in RCW 36.88.060 probably comes closest to indicating what 'feasible' actually means. It states that the Board must also ascertain ... *whether the benefits to be derived therefrom by the property within the proposed district, together with the amount of any county road fund participation, exceed the costs and expense of the formation of the proposed district and the contemplated construction or improvement ...*. In conclusion, the

statute states that the Board shall make a written finding on the feasibility issue. The formation resolution (or for that matter, the terminating resolution if that is the outcome of the hearing) should make a specific written finding regarding whether or not the proposed RID is feasible. If the RID is found to not be feasible, then the issue of petition sufficiency would be moot or, in the case of the ballot method, the election would obviously not be allowed to occur.

Note that RCW 36.88.060 refers to 'benefits derived by the property within the proposed district' in the proposed RID. It doesn't mention individual parcel benefits. So, in practice at Spokane County, we believe that the Board is at this point in the RID process examining the benefits to property as a whole in the RID and not the benefit to individual parcels. The issue of individual parcel benefit is to be addressed at the final assessment roll hearing should a legal protest be raised.

If the RID is found to be feasible, then the Board moves on to create the district if using the petition method or the protest method. If utilizing the ballot method, the Board at this point would only execute the feasibility resolution containing a directive that the election is allowed to proceed, that the hearing is continued to a date and time specific to receive the election results, and that action on the formation of the RID would be taken at that continued hearing. If the results of the election favor formation of the RID, then the Board would proceed to adopt the creation resolution as outlined below in #1 thru #5.

The creation resolution (which under either the petition method or the protest method would generally be one and the same as the feasibility resolution) must create the district and order the improvement to be made. Obviously, if county is following Chapter 35.43 RCW for the protest method, then the RID is not officially created until after the 30-day protest period.

No matter which method of creation is followed, the Board's feasibility/creation resolution has to discuss and address several other issues pursuant to RCW 36.88.060. Those include:

1. establishment of the district as the " County road improvement district # ";
2. a description of "*... the nature and territorial extent of the improvement to be made and the boundaries of the improvement district ...*";
3. a description of the selected method of assessment;
4. a declaration of the "*... estimated cost*" for the created RID "*and the proportion thereof to be borne by assessments, ...*"; and
5. determine whether the petition is sufficient OR make a finding as to results of the balloting.

In considering RID formation, both during and after the public hearing, the board is limited to how much modification can be made to the proposed RID without starting the process anew. Some changes can be made to the boundary of the proposed district or to the proposed improvement plan. However, Section 36.88.060 RCW is very specific as to the three things that *can't* be done to a proposed RID without starting the public process over again.

1. The board cannot alter the proposed, advertised improvement so as to increase the estimated cost by an amount greater than ten percent above that stated in the notice.

2. They cannot increase the proportionate share of the cost to be borne by assessments from the proportion stated in the notice.
3. Finally, the board cannot change the boundaries of the district to include property not previously included therein.

If the board finds that they need to do any one of the above items, then they must first pass a new resolution of intention and give a new notice to all property owners in the manner and form and within the time provided for the original notice.

After RID Formation and on to the Bond Sale

Following are both statutory and intuitive steps that need to be followed after the RID has been formed and the improvement ordered by the board. Generally, this part of the RID process is identical to that for LIDs. Therefore, other chapters of this LID/RID Manual will be very helpful in completing the RID process, particularly the post-formation sections of Chapter 3 and all of Chapters 4 and 5.

The outline that follows contains the statutory reference for those steps that are mandatory.

- Prepare and consider State Environmental Policy Act (SEPA) review (RCW 43.12C) or formally determine absence of need for it. This step may be required prior to adopting the resolution of creation if adoption of formation resolution is a final decision to undertake construction.
- Authorize and undertake the final engineering and design work.
- Publish call for bids for construction once a week for two consecutive weeks before bid opening. (RCW 36.88.320 and 36.77.020)
- Board receives bids and obtains analysis of bids and recommendation from the county engineer.
- Board accepts best bid and awards contract. (RCW 36.77.040) or
- Board authorizes construction by county's own crews to proceed as 'day labor'. (RCW 36.77.065 and RCW 36.77.070)
- Upon completion of the project, obtain when necessary state clearances, accept work and determine total RID costs. (RCW 60.28.040, 51.12.050 and 36.88.300)
- County engineer prepares proposed final assessment roll based upon total actual costs and files it with the clerk of the board. (RCW 36.88.090)
- The board adopts a resolution setting time, date, and place of final assessment roll hearing before the board of county commissioners who will be sitting as a board of equalization. (RCW 36.88.090) or
- RCW 36.88.095 allows board to appoint a committee or officer to hear final assessment roll and forward recommendations to the board.

- ❑ Mail notice of date, time, and place of the final assessment roll hearing along with information on an owner's right to object the proposed assessment. The notice must be mailed to all property owners within the RID at least fifteen days before date fixed for hearing. The notice shall state that all objections **must** be in writing and **must** be filed with the clerk of the board at or prior to the hearing. This notice will also include the proposed individual parcel assessment along with the parcel number identifier and legal description. (RCW 36.88.090)
- ❑ Publish notice of hearing at least two times in a newspaper of general circulation in the county with the first publication at least fifteen days before the hearing date. (RCW 36.88.090)
- ❑ Siting as a board of equalization, the board conducts assessment roll hearing, considers written objections, and either overrules the protest or modifies assessment based upon the protest information. (RCW 36.88.090)
- ❑ If any assessments are to be raised, a new hearing must be set and notice given by publication and mailing in the same manner as for the original final assessment roll hearing. (RCW 36.88.090)
- ❑ The board adopts a resolution confirming and levying assessments as finally approved. (RCW 36.88.090)
- ❑ Expiration of appeal period ten days after the effective date of the confirming resolution. (RCW 36.88.100 and 35.44.190 through 35.44.210)
- ❑ The county treasurer publishes (once a week for two weeks in a weekly paper or two consecutive issues of daily paper) and mails (to all property owners) notice that roll is filed for collection. (RCW 36.88.270)
- ❑ Interest free prepayment period expires thirty days after first publication of the county treasurer's notice. (RCW 36.88.270)
- ❑ The board adopts bond related resolutions. (RCW 36.88.200 and 36.88.210) (see Chapter 4 for more detailed explanation)
- ❑ Sell bonds at public or private sale. (RCW 36.88.210) (see Chapter 4 for more detailed explanation)
- ❑ The county road fund is reimbursed from the bond sale for public funds that were used to finance the assessment portion of the RID costs.

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Chapter 8

LID Programs and Lookalikes

LID/RID Programs/Cooperative Improvement Programs

Information about the City of Tacoma's LID program can be found at:

<http://www.tacoma.org/Page.aspx?nid=526>

Information about the King County RID program can be found at:

<http://www.kingcounty.gov/transportation/kcdot/Roads/EngineeringServices/RoadImprovementDistricts.aspx>.

Information about the Spokane County RID program can be found at:

<http://www.spokanecounty.org/engineer/content.aspx?c=1473>

The City of Portland has an active LID program as well:

<http://www.portlandonline.com/transportation/index.cfm?c=35715>

Vancouver, Canada has a neighborhood self program called Country Lanes:

<http://vancouver.ca/engsvcs/streets/localimprovements/improvementTypes/lanes/country.htm>

Latecomers Agreements

Important 2009 Legislative Change

EHB 1513 (Session Law C 230 L 09), Effective July 26, 2009

This legislation gives certain agencies, including cities and counties, the ability to participate in utility system latecomer agreements under Chapter 35.91 RCW. Before, cities and counties could participate only in street and transportation latecomer agreements under Chapter 35.72 RCW.

What Are They?

Latecomer agreements, also referred to as recovery contracts or reimbursement agreements, allow a property owner who has installed street or utility improvements to recover a portion of the costs of those improvements from other property owners who later develop property in the vicinity and use the improvements. Two different statutes, Chapter 35.72 RCW for streets, and Chapter 35.91 RCW for utilities, govern these. Both Chapter 35.72 RCW and Chapter 35.91 RCW allow a municipality to be considered as a property owner that can be reimbursed under a street latecomer agreement, thanks to EHB 1513 (2009).

What They Are Not

Latecomer agreement charges are not to be confused with local improvement district (LID) assessments. While the computation of charges to be recovered under a latecomer agreement can be very similar to that of an LID assessment, the procedures are very different, and, under an LID, the money goes to the municipality rather than to the property owner. In addition, LID assessments apply to all properties within the reimbursement area, whether or not the property is developed. Latecomer assessments, however, are triggered only if a property owner submits an application for a development that would have required similar improvements.

Latecomer agreement charges are also not to be confused with connection fees, also known as facilities charges or system development charges, for utilities under Chapter 35.92 RCW. Those fees or charges are a property owner's equitable share of the cost of the entire utility system and not just for improvements that serve his/her property.

MRSC Web Pages

Go to <http://www.mrsc.org/Subjects/PubWorks/latecomers.aspx>.

Sidewalk Statutes

Three chapters, 35.68 RCW, 35.69 RCW and 35.70 RCW, provide cities and towns with the authority to require property owners abutting a public street to construct sidewalk improvements or, if the property owners refuse, to construct the improvements itself and assess the costs to them. Each of the statutes has a slightly different approach to the issue and must be read carefully to make sure all procedures particular to that statute have been followed.

Sidewalk Statute Summary

Statute	Chapter 35.68	Chapter 35.69	Chapter 35.70
Applicability	All cities or towns	Code cities, first and second class cities, or charter cities of equal population	Code cities or second class cities and towns
Improvement Type	Construct, reconstruct and repair sidewalks, curbs and gutters	Sidewalk construction and reconstruction less than one block long	Any form of sidewalk construction
Remarks	City may require improvements to be made or accomplish them through contract	City requires improvements to be made and, if not, then accomplishes them through contract	City requires improvements to be made and, if not, then accomplishes them through contract
All three statutes refer to limitations in RCW 35.69.020: (a) an abutting property owner cannot be charged more than 50 percent of the valuation of the property, exclusive of improvements; (b) an abutting property owner cannot be charged if action by city caused deterioration or damage or if the deterioration or damage was caused by failure of the city to enforce its ordinances.			

The MRSC website has a listing of resources for Sidewalk Repair and Maintenance programs at:
<http://www.mrsc.org/Subjects/PubWorks/sidew.aspx>

Parking and Business Improvement Areas

What is a Parking and Business Improvement Area (PBIA)?

A parking and business improvement area (PBIA) is designed to aid general economic development and to facilitate merchant and business cooperation. A PBIA is a local self-help funding mechanism that allows businesses and property owners within a defined area to establish a special assessment district. Funds raised can be used to provide management, services, facilities, and programs to the district. The Washington State Office of Trade and Economic Development publication, *Organizing a Successful Downtown Revitalization Program Using the Main Street Approach* notes that PBIAs require a lot of effort and time to put together, and can be very politically sensitive. To date, very few PBIAs have withstood the test of time.

What Can a Parking and Business Improvement Area Do?

The activities in a parking and business improvement area are financed through a special assessment that is imposed on businesses, multifamily residential developments, and mixed-use developments located within the geographic boundaries of the area. The assessments can be used to finance:

- construction, acquisition, or maintenance of parking facilities in the area;
- decoration of public areas;
- promotion of public events in public places in the area;
- furnishing of music in any public place in the area;
- provision of maintenance and security of common public areas; or
- management, planning, and promotion of the area, including the promotion of retail trade activities in the area.

Parking and business improvement areas are not explicitly authorized to promote tourism.

MRSC Web Pages

Go to <http://www.mrsc.org/subjects/econ/ed-bia.aspx>.