ORDINANCE NO. 3438

AN ORDINANCE of the City of Kent, Washington, modifying, approving, and confirming the assessments and assessment roll of Local Improvement District No. 340 for the construction of an arterial corridor from the Green River at S. 200th Street northeasterly along Russell Road to S. 196th Street and then easterly along S. 196th Street to the East Valley Highway as provided by Ordinance No. 3404, and levying and assessing a part of the cost and expense thereof against the several lots, tracts, parcels of land and other property as shown on the assessment roll.

WHEREAS, the assessment roll levying the special assessments against the property located in Local Improvement District No. 340 in the City of Kent, Washington (the “City”), has been filed with the City Clerk as provided by law; and

WHEREAS, the City Council delegated under RCW 35.44.070 to the Public Works Committee the conduct of the hearing as a Board of Equalization on the assessment roll; and

WHEREAS, notice of the time and place of hearing on the assessment roll and for making objections and protests to the roll was published at and for the time and in the manner provided by law fixing the time and place of hearing thereon before the Committee for the 16th day of November, 1998, at the hour of 3:30 p.m., local time, in the Council Chambers in the City Hall, Kent, Washington, and further notice thereof was mailed by the City Clerk to each property owner shown on the roll; and

LID 340 Final Assessment Roll
WHEREAS, notice of the time and place of a supplemental hearing on the assessment roll and for making objections and protests to the roll was published at and for the time and in the manner provided by law fixing the time and place of supplemental hearing before the Public Works Committee for the 4th day of January, 1999, at the hour of 3:30 p.m., local time in the Council Chambers in the City Hall, Kent, Washington, and further notice thereof was mailed by the City Clerk to each property owner shown on the notice of supplemental hearing; and

WHEREAS, at the time and place fixed and designated in the notices the hearings were held, all written protests received were considered and all persons appearing at the hearing who wished to be heard were heard, and the Committee, sitting and acting as a Board of Equalization for the purpose of considering the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the improvement, considered all such protests, determined to modify certain of the assessments appearing on such roll, and over ruled all other protests; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1: Roll Confirmation.** The assessments and assessment roll of Local Improvement District No. 340, which has been created and established for the purpose of constructing an arterial corridor from the Green River at S. 200th Street northeasterly along Russell Road to S. 196th Street and then easterly along S. 196th Street to the East Valley Highway, as provided by Ordinance No. 3404, as the same now stand after the modification made in the Findings as referenced in Section 3 shall be and the same are approved and confirmed in all things and respects in the total amount of $21,314,017.00.
SECTION 2. Special Benefit. Each of the lots, tracts, parcels of land and other property shown upon the assessment roll is determined and declared to be specially benefited by this improvement in at least the amount charged against the same, and the assessment appearing against the same is in proportion to the several assessments appearing upon the roll. There is levied and assessed against each lot, tract or parcel of land and other property appearing upon the roll the amount finally charged against the same thereon.

SECTION 3. Findings. The Findings of Fact, Conclusions and Recommendations of the Committee regarding LID 340 (December 14, 1998), and the Supplemental Findings of Fact, Conclusions and Recommendations of Public Works Committee Regarding LID 340 (January 14, 1999) attached hereto at Exhibits 1 and 2 are hereby adopted by the Council and incorporated herein by this reference.

SECTION 4. Notice of Roll. The assessment roll as modified, approved, and confirmed shall be filed with the Finance Division Director of the City for collection and the Finance Division Director is authorized and directed to publish notice as required by law stating that the roll is in her hands for collection and that payment of any assessment thereon or any portion of such assessment can be made at any time within 30 days from the date of first publication of such notice without penalty, interest or cost, and that thereafter the sum remaining unpaid may be paid in fifteen (15) equal annual installments. The estimated interest rate is stated to be 6.25% per annum, with the exact interest rate to be fixed in the ordinance authorizing the issuance and sale of the local improvement bonds for Local Improvement District No. 340. The first installment of assessments on the assessment roll shall become due and payable during the 30-day period succeeding the date one year after the date of first publication by the Finance Division Director of notice that the assessment roll is in her hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of
the assessment remains unpaid after the first 30-day period, interest upon the whole unpaid
sum shall be charged at the rate as determined above, and each year thereafter one of the
installments, together with interest due on the unpaid balance, shall be collected. Any
installment not paid prior to expiration of the 30-day period during which such installment
is due and payable shall thereupon become delinquent. Each delinquent installment shall
be subject, at the time of delinquency, to a charge of 9% penalty levied on both principal
and interest due upon that installment, and all delinquent installments also shall be charged
interest at the rate as determined above. The collection of such delinquent installments
shall be enforced in the manner provided by law.

SECTION 5: - Severability. If any one or more sections, subsections, or
sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall
not affect the validity of the remaining portion of this Ordinance and the same shall remain
in full force and effect.

SECTION 6: - Effective Date. This ordinance shall take effect and be in
force five (5) days from and after its passage, approval and publication as provided by
law.

ATTEST:

BRENDA JACOBER, CITY CLERK
APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

JIM WHITE, MAYOR

LID 340 Final Assessment Roll
I hereby certify that this is a true copy of Ordinance No. 3438, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Brenda Jacober (SEAL)
BRENDA JACOBER, CITY CLERK
FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS OF PUBLIC WORKS COMMITTEE REGARDING LID 340

I. FINDINGS OF FACT

A. GENERAL LID FINDINGS

1. Since the early 1980's, both the City and other regional and state agencies have determined the need for a cross-valley arterial roadway to serve the business and citizens who use the north Kent Valley.

2. As presently designed, the South 196th Street Corridor Project ("Project") will provide another east/west corridor across the Valley, connecting I-5 with East Valley Highway with a grade separated crossing of the mainline railroad tracks.

3. On June 2, 1998, the Kent City Council passed Ordinance #3404 which formed LID 340 for the purpose of partially funding the Project. The LID boundary is generally bounded by South 180th Street on the north, SR 167 on the east, South 228th on the south and the Kent city limits on the Green River on the west.

4. Project improvements are as follows:

- The intersection of Orillia Road/S. 200th Street will be signalized, and two south- to eastbound left-turn lanes will be added to Orillia road. Between Orillia Road and the Green River, S. 200th Street will be widened from two to four travel lanes with a center left-turn lane where needed. The north leg of Frager Road at S. 200th Street will be realigned to a "T" intersection roughly 700 feet west of its current location. The south leg of Frager Road will be eliminated and the road will terminate just south of S. 200th Street in a cul-de-sac. Bicycle lanes five feet wide and sidewalks 5.5 feet wide will be constructed on both sides of S. 200th Street.

- A new bridge will span Green River, accommodating the four lanes of S. 220th Street and the bike lanes and sidewalks.

- East of the Green River, Russell Road and S. 196th will follow their existing alignment to Mill Creek just beyond the 72nd Avenue S. right-of-way, but will be widened to five lanes, including a center turn-lane, for the entire length. Sidewalks will be included in the design, as well as bicycle lanes connecting to the Interurban Trail.
• From S. 196th Street, just west of Mill Creek, 72nd Avenue S. will be extended along the existing right-of-way to its current terminus at approximately S. 194th Street.

• A new bridge, approximately 1,425 feet long will span Mill Creek, the Western Processing site, two sets of mainline railroad tracks, and the Weyerhaeuser and South Seattle Auto Auction sites. The bridge will include four lanes with sidewalks, but no bicycle lanes will be provided.

• From the east end of the bridge to 84th Avenue S., the road will be located along the existing S. 196th Street right-of-way and through the Kingsport Industrial Park. The road will consist of four travel lanes with a center turn lane and sidewalks on both sides. No bicycle lanes will be provided along this segment.

5. On November 16, 1998, having given notice in accordance with applicable law, the Public Works Committee (Committee) of the Council met for the purpose of hearing any protest to the final assessment roll for LID 340 and forwarding recommendations to the full City Council for final action. At that time the Committee received a total of 18 protests from various property owners in the LID which had been filed in accordance with the notice and state law. Each protest was assigned a number beginning with P1. A further protest from Lincoln Distribution Center was received after the deadline and therefore was rejected as non-timely.

6. The Committee heard testimony from the City and all property owners who had submitted timely protests and wished to be heard. 25 exhibits were offered during the course of the hearing and were given sequential numbers, beginning with 1. The hearing was continued to November 23, 1998 for rebuttal evidence from the City and final arguments.

7. Based on the testimony, exhibits and final arguments, the Committee makes the following additional general findings, which will be followed by specific findings related to each parcel.

B. GENERAL FINDINGS AS TO ALL PARCELS

1. Prior to work commencing on the Project, there were no through street connections. Instead, the existing roadways are primarily two-lane paved roads with minimal drainage and lighting, terminating at the Green River and the railroads.

• On the west side of the Green River, in unincorporated King County, S. 200th Street is a paved two-lane road with narrow gravel shoulders. There are plowed fields on both sides of the road. A Class 2 stream exists...
both within culverts and in open channels on the south side of the road.

- In the City of Kent on the east side of Green River, Russell Road, between S. 196th Street and the projected center line of S. 200th Street, is an existing paved road and transitions from three lanes to two lanes. Although Russell Road is a designated bicycle facility, cyclists generally use the travel lanes because the shoulders are narrow and in some places, non-existent.

- S. 16th Street, between Russell Road and SR-181, has three paved lanes and paved shoulders.

- Between SR-181 and Mill Creek, S. 196th Street is two lanes wide with paved shoulders.

- Along the east side of Mill Creek lies the Western Processing property, a designated federal Superfund site under the jurisdiction of the U.S. Environmental Protection Agency.

- Further east, between Western Processing and 84th Avenue S., two sets of mainline railroad tracks run north/south through and beyond the project area. The tracks are owned and operated by Burlington Northern (BN) and Union Pacific (UP) railroad companies. To the east of these tracks, S. 196th is paved leading from 84th Avenue S. approximately halfway to the railroad tracks.

2. After construction of the improvements, traffic access and circulation throughout the north end of the Green River Valley will be improved by the following:

- Providing another east/west arterial corridor across the Valley.

- Providing an above-grade crossing over both mainline tracks, allowing continuous traffic without railroad delays along one major east/west corridor.

- Providing direct access to the I-5 corridor to the west across the Green River, diverting substantial traffic flow from the north and south along both East Valley and West Valley Highways.

- Mitigate existing and future traffic conditions along S. 180th and S. 212th Streets.

3. In developing the final assessment roll, the City initially considered using the zone and termini method set forth in RCW
However, the City testified that because of the variety of property types, sizes, development potential and zoning, the zone and termini method was not used. In its place the special benefit analysis was used. City witnesses testified that this method would more fairly reflect the special benefits to the various properties within the LID boundaries. No other witnesses provided testimony to dispute this assertion.

4. The City hired the firm of Bruce C. Allen and Associates, Inc. to perform the special benefit analysis. Bruce Allen and Deborah Foreman performed the analysis and provided testimony.

5. A Preliminary Special Benefits Study, dated May 12, 1998, was prepared. (Exhibit 20) This report was available for inspection by the various property owners within the LID. Representatives from the Allen Company discussed the analysis with a variety of property owners and made some adjustments in their special benefit analysis.

6. A Final Special Benefits Study, dated October 30, 1998, was prepared by Allen and Foreman and submitted as the basis for the final assessment roll. (Exhibit 4)

7. Any finding, general or specific deemed to be a conclusion, shall be considered as such.

C. FINDINGS AS TO SPECIFIC PROTESTS

1. P1, A.P.E. LLC was, continued to December 7 to allow counsel for the property owner more time to present evidence and will be subject to further hearing on January 4, 1999 at 3:30 pm.

2. P2, Puget Sound Energy. Mr. Frank Swan, a land planner, provided testimony that his client's property was not suited to other uses than a utility corridor. The City's witnesses disputed this assertion, and gave examples of other PSE property that have been used for non-utility purposes.

3. P3, William Boeing, Jr. Pursuant to stipulation, the City agreed that this assessment would be reduced to $0.

4. P4, Paul Rehn. No testimony was provided.¹

5. P5, Mathilda De Mayo. No testimony was provided.

6. P6 and P7, Arco Products. No testimony was provided.

7. P8, Beatrice Wieser. No testimony was provided.

¹Information contained in the protest materials was considered by the Committee. No witnesses provided additional testimony.
8. P9, Richard Brooks. No testimony was provided. Mr. Brooks' only issue appears to be that his property is currently designated in current use pursuant to RCW 84.34.300, and therefore is not subject to LID assessment so long as such designation is maintained.

9. P10, Peggi Gates, Orillia Industrial Associates. No testimony was provided.

10. P11, Michael Scully. Mr. Scully, the property owner testified. His property is subject to an Environmental Mitigation Agreement (EMA) which established a mitigation amount in excess of what his assessment would be according to the special benefit analysis. Mr. Scully provided the Committee with the square foot assessments of adjoining property.

11. P12, United Warehouses. No testimony was provided.

12. P13, Union Pacific Railroad. Testimony was provided by Counsel for the railroad, Carolyn Larson and George Donnerberg, a MAI appraiser. Both witnesses testified that there were no special benefits to the railroad property because the existing rail tracks were the highest and best use.

13. P14, Nicholas Nesland. Counsel for the property owner, T.J. Parkes testified and submitted an appraisal by Roger Ockfen, a MAI appraiser. In rebuttal, the City submitted a supplemental analysis by the Allen Company (Exhibit 21), and testimony of Ms Foreman.

14. P15, Chevron USA, Inc. Testimony was provided by Yolanda Byeman, property development specialist for Chevron. She testified that because she believed there would be less traffic in front of the Chevron property, the LID improvements would have a negative effect on property values. Mr. James Price, a MAI appraiser testified that in his opinion the LID improvements would have no impact on the fair market value of the Chevron property. He also submitted an appraisal that recited the same conclusion (Appraisal contained in P15). In rebuttal, the City submitted supplemental analysis (Exhibit 22) from the Allen company, and testimony of Ms Foreman and Mr. Allen. In addition to requesting a $0 assessment, counsel for Chevron requested credit for property dedicated to the City by the former owner.

15. P16. Mr. Jones. The property owner testified that he was forced to sign the EMA for his property and that other properties in the vicinity were charged less on a square foot basis.

17. P18. Mr. Temkin. The property owner testified that his property should not be considered in the primary zone of proximity, but rather the secondary. His property is located at the east end of the improvements. A traffic signal will be installed to control ingress and egress from his property.

18. The protest received from Lorna Faxon on behalf of Lincoln Distribution Center was late and therefore should not be considered. No one appeared at the hearing on behalf of the property owner.

II. CONCLUSIONS

A. GENERAL CONCLUSIONS

1. Any conclusion deemed to be a finding shall be so considered.

2. Special benefits are measurable increases in the value of real property in excess of any enhancement to the general area. It is measured as the difference between the market value of the property without the LID project and the market value with the LID project assumed completed.

3. Initially, the City is favored with certain presumptions: that the improvements are a benefit to the property within the LID, the assessment is no greater than the benefit, the assessment is equal or ratable to the assessments upon other properties similarly situated, and the assessment is fair. In Re Indian Trail Trunk Sewer, 35 Wash. App. 840 (1983). The property owners must present expert appraisal testimony to overcome these presumptions.

4. The special benefit analysis performed by the City more fairly reflects the special benefits to the properties within the LID than the zone and termini method.

B. CONCLUSIONS AS TO SPECIFIC PROPERTIES

1. Protests P6, P7, P9, P10, P12, P17, and P18 should each be denied on the basis that the property owners have not overcome the City's presumptions.

2. With respect to P4, P5 and P8, it appears that the properties are currently improved with single family homes and are currently being used as such. While this is not the highest and best use, the Committee concludes that the assessments should be deferred, subject to the property owner qualifying under RCW 84.38. City staff should work with claimants to complete forms necessary for consideration by the county under Chapter 84.38 RCW. If the property owners elect not to sign such a deferral, the assessments must be paid as required by law.
3. With respect to P11 and P16, the Committee finds that while the property owners did execute valid EMAs on their property, the surrounding property owners whose properties are not subject to EMAs are paying less per square foot, and therefore, in equity, these two protests should be granted in part. For P11, the assessment should be reduced to $.20 per square foot and for P16 the assessment should be reduced to $.22 per square foot.

4. With respect to P2, the Committee concludes that the property owner has not met its burden to overcome the City's presumptions. In any case, the Committee concludes that the property is subject to other economical uses and that the property owners have valued the property in a manner that indicates economical uses other than as a utility corridor.

5. With regard to P13, the Committee concludes that the railroad property is subject to assessment. The present use of the property cannot be used to determine the benefits that may accrue. In re West Wheeler 97 Wash. 669,675 (1917). The Committee concludes that the testimony of Mr. Allen and Ms Foreman should be given greater weight than the testimony of the railroad witnesses because, among other things, Allen and Foreman examined specific sales data and Mr. Allen indicated that his firm had many years experience in appraising railroad property. Parcel 113, however presents a unique situation. This parcel is basically landlocked between the merging rail tracks and thus is of limited use, other than as railroad property. For this reason, the Committee concludes that the assessment on this parcel should be reduced to $25,677.

6. With respect to P14, the Committee has considered both appraisals and concludes that the assessment should be reduced to $75,000. The Committee agrees with the Ockfen analysis to the extent that the improvements will tend to impair truck access to the site. Therefore the special benefits ascribed by the Allen study are overstated to some extent. The Committee agrees that the rest of the Allen analysis should be given more weight because, among other things, the Ockfen appraisal contains errors and internal inconsistencies.

7. With respect to the P15, the Committee concludes that the appraisal testimony of Mr. Allen and Ms Foreman should be given greater weight. Both appraisers concluded that the "before" value of the property was $18 per square foot. Mr. Price did not conduct any sales analysis of the property in the "after" situation. Allen did under take such analysis. This gives more credibility to the Allen appraisal.

While Ms Byeman testified that traffic passing by the gas station would decrease after the improvements were completed, she offered no factual basis for this conclusion. Mr. Price's conclusions as to the "after" value of the property are also based
on the assumption that traffic volumes would be reduced. (See page 15 of Mr. Price's appraisal submitted as part of P15) Mr. Price can offer no factual basis for this assumption and in fact notes the "absence of detailed traffic studies and projections".

Ms Foreman's opinions were based, in part, on the assumption that congestion in the area would be lessened, which assumption was supported by the testimony of other City witnesses, including Don Wickstrom. Less congested streets do not necessarily mean fewer cars. For this reason, in part, the Committee concludes that the Allen analysis of special benefits should be given more weight than the Price appraisal.

Counsel for Chevron also argued that the assessments were founded on a fundamentally wrong basis. However Mr. Price indicated that he accepted the professional qualifications of Mr. Allen and in fact undertook the same "before" and "after" analysis.

With respect to the issue of the credit, the Committee concludes that no credit should be given. The statute, RCW 35.44.420, applies to property that has been dedicated to make the LID improvements. The property that was dedicated by Chevron's predecessors in interest was not used for the LID improvements.

III. CONCLUSIONS

Based on the foregoing Findings and Conclusions, the Committee recommends to the City Council as follows:

A. Pursuant to stipulation, the Committee recommends P3 be GRANTED and the assessment reduced to $0.

B. The Committee recommends the following protests be GRANTED IN PART: P11, assessment reduced to $.20 per square foot; P13, parcel 113 be reduced to $25,677; P14, assessment reduced to $75,000; P16, assessment reduced to $.22 per square foot.

C. The Committee recommends the following protests be DENIED: P2; P6; P7; P9; P10; P12; P13, with the exception of parcel 113; P15; P17 and P18.

D. The Committee recommends the following protests be DENIED, but that the assessments be DEFERRED upon qualification by the property owners under RCW 84.38: P4; P5 and P8.

E. The Committee recommends that, except as specifically
provided above, the final assessment roll be confirmed without modification.

DATED THIS 14th day of December, 1998

Tim Clark, Chair

Tom Brotherton

Leona Orr
SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS OF PUBLIC WORKS COMMITTEE REGARDING LID 340

WHEREAS, pursuant to a Notice of Supplemental Hearing mailed to certain property owners on or about December 16, 1998, the Public Works Committee of the Kent City Council held a hearing on January 4, 1999 to consider protests to the final assessment role for LID 340. Based upon the testimony and evidence submitted, the Committee now enters the following:

I.

FINDINGS OF FACT

1. These supplemental Findings, Conclusions and Recommendations are a continuation of the Findings of Fact, Conclusions and Recommendations previously entered by the Committee. Therefore, the Committee re-adopts the general LID findings and the general findings as to all parcels as set forth in that document.

2. Protest P1, APE LLC, pursuant to earlier order, was continued to this date for presentation of evidence. The property owner had previously submitted an appraisal from Roger Ockfen, an MAI appraiser (Exhibit 26). The City presented rebuttal testimony of Deborah Foreman and submitted supplemental appraisal information.

3. Four additional protests were received at the January 4 supplemental hearing. These protests were contained in a letter dated January 4, 1999 from RREEF Management Co., signed by Ginger Mueller. These protests were assigned numbers as follows: P19, which is the Northward Business Park, LID parcel #215; P20 is the West Valley Distribution, LID parcels #147 and #119; P21 is described as KCP 72 and is LID parcel #401; P22 is described as KCP 216 and is LID parcel #448. Testifying for the properties was Chuck Mahlen, an employee of RREEF Management Co. Mr. Mahlen is not an appraiser. The City presented rebuttal testimony from Deborah Foreman and Tom Bradley of CTE Engineers.

II.

CONCLUSIONS

A. General Conclusions

1. The Committee incorporates the general conclusions previously adopted.

B. Conclusions as to Specific Properties
1. Protest P19, P20, P21 and P22 should each be denied on the basis that the property owners have not overcome the City's presumptions. The Committee acknowledges that the City has preserved a possible challenge to P19 on the basis of prior notice.

2. With respect to P1, it appears that the property owner concedes there are special benefits to the property. The only issue is to what extent the property is specially benefited. The Committee finds that the Ockfen appraisal (Exhibit 26) suffers from a fundamental flaw, namely the appraisal's lack of consideration of the benefits of the improvements to 72nd along the entire length of the subject property. Improvement of 72nd, together with the improvements along 196th, will render this property superior to other properties in the area in terms of access and visibility. On the other hand, the Committee concludes that the Bruce Allen appraisals and the testimony of the City's witnesses are more believable since, among other things, they incorporated the improvement of 72nd in their analysis. Further, the Committee concludes that the measure of special benefit is to the property, not to whatever business may happen to be using it at any particular time. The Foreman analysis proceeded from this principal, while the property owner's analysis did not. Nevertheless, when comparing the subject property to immediately surrounding properties it does appear that some adjustment should be made, particularly in light of the Committee's recommended action on the Neslund property, P14. The Committee finds that the subject property will be specially benefited to a greater extent than the Neslund property primarily due to the location. Therefore, the Committee recommends that the assessment be reduced to $203,805.

III.

RECOMMENDATIONS

Based on the foregoing Supplemental Findings and Conclusions, the Committee recommends to the City Council as follows:

A. The Committee recommends that the following protests be DENIED: P19, P20, P21 and P22.

B. The Committee recommends that the following protests be GRANTED IN PART: P1, Assessment reduced to $203,805.

On January 4 the Committee has further unanimously authorized the Chair to review and approve these Supplemental Findings and Conclusions.

DATED this 4th day of January, 1999.

Tim Clark, Chair
ORDINANCE

Ordinance No. 3438

Modifying, amending, and confirming the
assessments to assessment roll of LID 340

Along Russell Road to S. 19th St., thence
northeast along S. 19th St. to East Valley