AN ORDINANCE of the City Council of the City of Kent, Washington, relating to Local Improvement District No. 363; approving and confirming the assessments and assessment roll of Local Improvement District No. 363 for construction of improvements beginning at the intersection of East Valley Highway and S. 224th Street via S. 218th/216th Street, terminating at the intersection of Benson Road and S. 216th, as provided by Ordinance No. 3896, and levying and assessing a part of the costs and expenses thereof against the lots, tracts, parcels of land and other property as shown on the assessment roll.

RECITALS

A. The assessment roll levying the special assessments against the property located in Local Improvement District ("LID") No. 363 in the City of Kent, Washington (the "City") has been filed with the City Clerk as provided by law.

B. The City Council delegated, under RCW 35.44.070, a special committee of the Council composed of the members of the Public Works Committee (the "Committee") to act as a Board of Equalization and conduct a hearing on the assessment roll.

C. The City Council fixed the time and place of the hearing before the Committee first for May 14, 2012, and later rescheduled for July
25, 2012, in the Council Chambers in the City Hall, Kent, Washington. Notice of the time and place of the hearing and rescheduled hearings on the assessment roll and for making objections and protests to the roll was published within the time and in the manner provided by law. In addition, the City Clerk mailed written notices, within the time and in the manner provided by law, to each property owner shown on the roll.

D. At the time and place fixed and designated in the notice, the Committee held the hearing and received all written protests. All persons appearing at the hearing who wished to be heard were heard, and the Committee, sitting and acting as the Board of Equalization for the purpose of considering the LID No. 363 final assessment 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 parcel of land by reason of the improvement, considered all protests.

E. After considering the entire record pertaining to the assessment roll, the Committee entered its Findings, Conclusions, and Recommendations ("Findings") regarding LID No. 363 on August 20, 2012.

F. Notice of the Findings and the right to file a written appeal to the full City Council of the Findings was given to each party timely filing a written protest before the Committee.

G. The City Council has considered the record and the Findings, based upon the record considered by the Committee; and any written appeal of the Findings received by the City Council.

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

SECTION 1. - Roll Confirmation. The assessments and assessment roll of Local Improvement District No. 363, established for the purpose of constructing improvements of a roadway beginning at the intersection of East Valley Highway and S. 224th Street via S. 218/216th Street, terminating at the intersection of Benson Road and S. 216th, shall be and the same are approved and confirmed in all things and respects in the total amount of $9,150,627.14. Under Ordinance No. 3896, LID No. 363 provides for public road improvements, including the installation of curbs, gutters, sidewalks, a two-way left turn lane, planted center medians where possible, roadside planter strips, street lighting, undergrounding of overhead electrical facilities, storm water management facilities, a bridge over SR 167, a new Garrison Creek bridge, sanitary sewer and water extensions and/or stubs and appurtenances to provide service to properties not currently served by City utilities, all relating to the overall project on East Valley Highway to the west and 108th Avenue SE (SR 515, Benson Highway) to the east.

SECTION 2. - Findings and Special Benefit.

2.1 Recitals A through G, above, are incorporated herein by this reference.

2.2 The Findings, Conclusions and Recommendations ("Findings") regarding LID 363, attached hereto as Appendix A, are incorporated herein by this reference as the decision of the Council, sitting and acting as a Board of Equalization, on the protests regarding the assessment roll for LID 363.

2.3 The method of assessment or combination of methods used by the City to compute the assessments, as supported by the Special
Benefit Study (Findings, at General Paragraph 9) is deemed to more fairly reflect the special benefits to the properties being assessed.

2.4 Each of the lots, tracts, parcels of land, and other property shown upon the assessment roll as determined in the Findings are declared to be specially benefited by the LID No. 363 improvements in at least the amount charged against the same, and the assessment appearing against each property 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 them as shown on the roll.

**SECTION 3. Notice of Roll.** The assessment roll as approved and confirmed shall be filed with the Finance Director of the City for collection, and the Finance Director is authorized and directed to publish notice as required by law stating that the roll is in the Director's hands for collection and that payment of any assessment or any portion of such assessment can be made at any time within thirty (30) days from the date of first publication of that notice without penalty, interest or cost and that, thereafter, the sum remaining unpaid may be paid in fifteen (15) equal installments of principal together with accrued interest. The estimated interest rate is stated to be 4.5% 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. 363. The first installment of assessments on the assessment roll shall become due and payable during the thirty (30) day period commencing one year after the date of first publication by the Finance Director of notice that the assessment roll is in his 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 thirty (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 thirty (30) day period during which such installment is due and payable shall be delinquent. Each delinquent installment shall be subject, at the time of delinquency, to a charge under Kent City Code Section 3.22.030 of a penalty levied on both principal and interest due upon that installment equal to the rate fixed in the ordinance authorizing the issuance and sale of the local improvement bonds for Local Improvement District No. 363 plus five (5) percent. All delinquent installments also shall be charged interest at the rate as determined above. The collection of delinquent installments shall be enforced in the manner provided by law.

SECTION 4. - Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 5. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this ordinance and that remaining portion shall maintain its 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 and publication, as provided by law.
I hereby certify that this is a true copy of Ordinance No. 4051 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.
FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

REGARDING LID 363

Pursuant to notice, the final assessment roll hearing on LID 363 was held on July 25, 2012, in the Kent City Hall, Kent, Washington. The hearing was called to order at 1:30 pm. The hearing was conducted by the City Council’s Public Works Committee consisting of Council members Elizabeth Albertson, Chair, Dennis Higgins and Dana Ralph. Following conclusion of all testimony, the Committee submits these Findings of Fact, Conclusions and Recommendations.

I. FINDINGS OF FACT

A. GENERAL FINDINGS

1. LID 363 was formed pursuant to Ordinance 3896, passed by the City Council on January 9, 2008. The LID was created to construct a roadway beginning at the intersection of East Valley Highway and S. 224th Street via S. 218th/216th Street, terminating at the intersection of Benson Road and S. 216th and related improvements needed to complete the roadway.

2. These road improvements have been part of the City’s Comprehensive Transportation Plan, the City’s 6 Year Transportation Improvement Plan and the Green River Valley Transportation Action Plan for many years and are necessary for development of that portion of the City.

3. Beginning in the 1980’s, the City used a variety of agreements to allow developers to improve their property prior to these street improvements being installed. These agreements included LID agreements and what have been called Environmental Mitigation Agreements (EMA’s). The form of these agreements has varied over the years, but all were designed to allow development to proceed with development of their property in advance of actual construction of the street improvements.

4. The EMA’s established a means to determine the amount of impact that a proposed project would have on the need for street improvements and further provided the owners with the right to submit traffic studies if the owners determined that the amount of mitigation was too high. These studies were required to be submitted within a specified time.
5. LID 363 consists exclusively of properties that have previously signed an EMA and thus were allowed to develop without the necessary transportation infrastructure being in place.

6. There are 840 parcels included within the LID. Of these, 460 properties have prepaid as is allowed under the EMA’s. Payment of the EMA agreed amount or the amount assessed under this LID satisfies the City’s traffic impact fee requirement which was started in 2010.

7. At the beginning of the meeting the Chair announced that property owners had to file a written protest in order for the protest to be heard. She gave the property owners until 2 pm to file a written protest.

8. For all protests that were received, the City provided the Committee with a copy of the EMA signed by the owner or the owner’s predecessors. The EMA’s had all been recorded with King County and would have shown up as an exception on any title report if the property were sold.

9. The City presented Mr. Robert Macaulay, an MAI appraiser. Mr. Macaulay testified regarding his special benefit study and the methodology he used to determine special benefits. In his opinion, all the properties in the LID that he appraised had special benefits in excess of the amount of the assessment.

B. FINDINGS AS TO SPECIFIC PROPERTIES

1. Irawaty Gunawan-Muturi. The property owner did not appear or present witnesses. The protest letter stated that the owner did not believe the project improved his property values.

2. D&I II, LLC. The property manager for the owner, Mr. Griffen testified that the amount of the assessment was too high for the property, especially since the property was subject to another LID assessment.

3. Antonio Sican. No one appeared for the owner. The owner’s protest letter indicated that the owner does not use the roads that are to be improved.

4. Kathie Severine. No one appeared for the owner. The owner’s protest letter indicated that the owner does not use the roads that are to be improved.

5. Connie Corwin. No one appeared for the owner. The owner’s protest letter indicated that the owner does not use the roads that are to be improved. The owner also indicated that a neighbor is not being assessed and that she cannot get an appraisal for road work not done.

6. Public Storage. No one appeared for the owner. The protest letter indicated that there were no special benefits to the property.
Edward Kosnoski. No one appeared for the owner. The protest letter dealt with the City assuming King County obligations.

Seth and Jetta LaRiviere. No one appeared for the owners. The protest letter indicated that there were no special benefits to the property.

Mary Stewart. Ms. Stewart testified that her work hours and driving habits mean that she does not use the project streets during the evening rush hour when the traffic impacts to the street system were measured.

Lenora Williams. No one appeared for the owner. The protest letter indicated that the project would not benefit the owner as the owner seldom drives the project streets and is retired.

Lillie Rainwater-Johnson. No one appeared for the owner. The protest letter indicated that the project would not benefit the owner as the owner seldom drives the project streets.

RREEF America REIT II Corp Z. No one appeared for the owner. The protest letter stated that the properties were subject to assessment for LID 362 and the total amount of assessments would be a undue hardship on the businesses occupying the properties.

Stephen and Brenda Lau. No one appeared for the owners. The protest letter indicated that they do not believe the property will increase in value.

Justin Slack. No one appeared for the owners. The protest letter objected to the time of the hearing and the need for an appraisal. The protest letter also questioned whether the project would provide benefits to the owners.

Sue Brazelton. No one appeared for the owner. The protest letter questioned the benefit of the project and indicated that the King County Assessor has shown no increased in property value as a result of the project.

McGowan Trust. No one appeared for the owner. The protest letter questioned whether there were any special benefits to the property and also questioned the assessment methodology.

Svetlana Laurel and Mike Gulizia. No one appeared for the owners. The protest letter indicated there would be no special benefits for the property. The owners also questioned the equities of the assessments.

PT Berkeley Heights Apartments LLC. The owner was represented by its legal counsel. The City and the owner reached a stipulated settlement detailed below.

Holiday Inn Hotel & Suites. Mr. Bailey Stober appeared as the owner’s agent. He submitted a traffic consultant’s report which indicated that there were an estimated 63 PM peak hour trips generated from the property. Since the EMA
estimated there would be 187 trips, the amount of payment established by the EMA was significantly higher. The traffic consultant concluded that the property should only be required to pay $134,220.24 based on the reduced number of trips. Public records show that the current owners acquired the property in 2004. The owner had no explanation as to why they did not submit a traffic report within the time as specified in Section 2.2.5 of the EMA.

20. Christine Dougherty. Ms Dougherty testified that her property is suffering from drainage issues occurring on 93rd Ave S which borders her property. She is concerned about future drainage problems arising from the project.

21. Jeff Olwell. Mr. Olwell testified that he bought the property in 1999 and was not aware of the EMA.

22. Emerald Place One LLC. The owner, Mr. Terkla appeared along with his legal counsel. Mr. Terkla testified he bought the property from foreclosure and did not read the EMA, although the EMA was referenced in the title report. The property is currently used as an office building and warehouse and is not suitable for retail as the property sits back from the main street. Of the current tenants only one secretary leaves at five. The rest of the tenants’ employees all arrive after 6 pm as they are in the janitorial business. The owner submitted an appraisal from Fred Strickland, MAI dated February 10, 2009. The appraisal did not appear to consider the effect of the EMA and concluded that there was no change in value to the proposed road project. The appraisal assumed the property as improved, with the road project and without the road project. The EMA recites that the then current owner was seeking to construct two retail buildings on the property which would cause certain environmental and traffic impacts. The EMA describes the level of impacts and the proposed mitigation which consists of the project improvements. The owner agrees to pay mitigation based on the number of trips estimated from the development. As with other EMA’s the owner is given a certain timeframe to provide the City with any traffic studies that would show fewer trips than are estimated.

23. Kenneth and Anne Mills. Ms Mills testified that she moved into the house after the EMA was signed.

24. 2000 Investors LLC. This is the Days Inn Hotel. Mr. Bailey Stober appeared as agent for the owner. No protest letter was submitted only a traffic consultant’s report. The traffic consultant’s report indicates that the EMA was based on 55 PM peak trips whereas the report shows 33 PM peak trips generated by the property. Therefore the assessment should be $70,305.84. The owner did not explain why the traffic report was not submitted in the time required by Section 2.2.6 of the EMA.

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. The property owner has the burden of producing evidence to rebut these presumptions. If the property owner presents sufficient evidence to rebut the presumptions (generally through appraisal testimony or other evidence of property value with and without the Project improvements), the City has the ultimate burden of showing special benefits.

4. The City followed the legally required provisions with regard to notice. Beyond the legal minimums, the City engaged in a series of meetings with the property owners over the progress of the LID.

B. Conclusions As To Particular Properties

1. Pursuant to stipulation, the assessment for Protest 18, LID parcels 65 and 66 is reduced to $213,048 to be divided 70% to parcel 65 and 30% to parcel 66.

2. The following property owners have failed to overcome the presumptions in favor of the City’s final assessment roll: All property owners except Protest 22, Emerald Place One LLC.

3. Holiday Inn property, Protest 19 and 2000 Investors LLC, Protest 24. The EMA provided a time within which the owner could submit traffic studies to demonstrate fewer peak hour trips from the development. The owner’s traffic study was only presented at the hearing giving the City no time to properly analyze or respond. Since each owner acquired the property before the traffic studies were due and thus had the opportunity to provide the City with the studies in a timely manner but chose not to do so, the Committee concludes that the studies should be rejected on that basis.

4. With regard to Emerald Place One LLC, Protest 22, the Committee agrees with the staff that Mr. Strickland’s appraisal did not consider the effect of the EMA

1 In Re Indian Trail Trunk Sewer, 35 Wash. App. 840 (1983).
2 Bellevue Plaza v Bellevue, 121 Wn.2d 397 (1993)
and thus is based on a flawed premise. The improvement on the owner’s property would not have been built without mitigation of the traffic impacts. The former owner agreed to mitigation those impacts by agreeing to formation of the LID and paying assessments based on trips generated. Without such agreement to mitigate, or actual mitigation, the property would not be improved. Thus, the Committee rejects the conclusions of the Strickland appraisal. The Macaulay appraisal, on the other hand, considers the effect of the EMA in estimating the difference in fair market value and thus is credible and based on accurate assumptions.

5. The Committee requests the City Attorney to provide information to those property owners who may appear to qualify as to the process for claiming an exemption from payment of the assessment under state law. This would include Mrs. Williams, Protest 10.

6. The Committee is concerned regarding the financial impacts of certain properties having to bear the costs of two or more LID assessments. While individually fair, the cumulative effects could harm the businesses and property owners to an excessive degree. The Committee recommends the Council address this issue.

III. RECOMMENDATIONS

Based on the foregoing, the Committee makes the following recommendations:

1. Protest 18, Parcels 65 and 66 assessments should be reduced and allocated in accordance with the stipulation set forth above.

2. All other assessments should remain as set forth on the Final Assessment Roll and all other protests should be denied.

DATED this 20th day of August, 2012

Elizabeth Albertson, Chair

Dennis Higgins
08/20/12

Dana Ralph

Date of Mailing: ________________
Mills, being first duly sworn on oath that she is the Licensing Representative of the

Kent Reporter
These agreements included LID to Ordinance 3896, passed by the 218th/216th Street, terminating at the intersection of Benson Agreements (EMA's). The form called Environmental Mitigation of their property in advance of improvements being installed. The agreements included LID agreements and what have been called Environmental Mitigation Agreements (EMAs). The form of these agreements has varied over the years and was designed to allow development to proceed with development of property in advance of their actual construction of the street improvements.

4. The EMAs established a means to determine the amount of improvements that would have on the need for special benefits in the property. The property owners had to file a written protest in order for the property owners to use the streets projects during the 1980's, the EMA's were not being used to determine special benefits. In his testimony, the City Manager for the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

5. Connie Corwin. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

6. There are 840 parcels included within the LID. Of these, 460, 560, 660, and 760 were assessed under this LID. The City Manager for the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

7. Seth and Jetta LaRiviere. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

8. Lennie Rameswater-Johnson. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

9. Mary Stewar, Ms. Stewart testified that her work hours and driving habits mean that she does not use the project streets during the 1980's, the EMA's were not being used to determine special benefits. In his testimony, the City Manager for the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

10. Holiday Inn Hotel Suites. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

11. Lillie Rameswater-Johnson. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

12. Stower appeared as agent for 24. 2000 Investors LLC. This is the Days Inn Hotel. Mr. Bailey testified that he bought the property for retail as the property sits back from the main street Of the current tenants only a security leaves at five. The rest of the ten­

13. Stephen and Brenda Lee. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

14. Justin Slack. No one appeared for the owner. The protest letter indicated that the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

15. Sue Brandtson. No one appeared for the owner. The protest letter questioned the ben­

16. McGowan Trust. No one appeared for the owner. The protest letter indicated that there were no special benefits to the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

17. Svetlana Laurel and Mike Bracken. No one appeared for the owner. The protest letter indicated that there were no special benefits to the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

18. PT Berkshire Heights Apartments L.L.C. The owner was represented by its legal counsel. The City and the owner reached a stipulated settlement detailed in a stipulated settlement.

19. Emerald Place One LLC. Mr. Olwell testified that he bought the property for retail as the property sits back from the main street Of the current tenants only a security leaves at five. The rest of the ten­

20. Kenwood Trust. No one appeared for the owner. The protest letter indicated that there were no special benefits to the property owner as the owner seldom improved his property values. That he said there would be a undue hardship on the property from foreclosure and the market value with the LID Project assumed completed.

21. Jeff Olwell. Mr. Olwell testified that he bought the property for retail as the property sits back from the main street Of the current tenants only a security leaves at five. The rest of the ten­

22. Emerald Place One L.L.C. Mr. Olwell testified that he bought the property for retail as the property sits back from the main street Of the current tenants only a security leaves at five. The rest of the ten­