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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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BEFORE THE WASHINGTON UTILITY
AND TRANSPORTATION COMMISSION

CITY OF SEATAC,
Petitioner,
v.
PUGET SOUND ENERGY, INC.
Respondent.
.....
CITY OF CLYDE HILL,
Petitioner,
v.
PUGET SOUND ENERGY, INC.
Respondent.

DOCKET NO. UE-010891

DOCKET NO. UE-011027

CITY OF CLYDE HILL'S REPLY TO PSE'S
RESPONSE TO MOTIONS FOR SUMMARY
DETERMINATION AND CROSS-MOTION

I. RULES AND STATUTES

The City of Clyde Hill in this reply makes citation to the following rules and statutes: RCW 80.04.015, RCW 80.04.150, RCW 80.28.020, RCW 80.28.050, RCW 80.28.074, RCW 80.28.080, RCW 80.28.090, RCW 80.28.100, WAC-80-030, and WAC 480-80-120.

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II. REPLY

PSE is wrong for the following reasons:

A. 92nd Ave. N.E. in Clyde Hill

a. Street Use, Function and Character.

2.1 Schedule 70 applies to the conversion of PSE's existing overhead facilities to underground within the entire boundary of the conversion area, including along the 92nd Ave. N.E. portion of the conversion area (Attachment A), described in Clyde Hill Ordinance #836 creating LID # 2001-01.

2.2 There is a single conversion area (Attachment A) with a single unbroken boundary wherein all overhead electrical facilities are to be converted to underground facilities.

2.3 The single conversion area in question, including 92nd Ave. N.E. is *used exclusively for residential purposes* consistent with both the area zoning and the actual land uses within the conversion area. There are no commercial electrical load users within the conversion area (or even within the entire City of Clyde Hill) served by the overhead electrical facilities to be undergrounded by the LID conversion project. There are no non-conforming commercial land uses pre-existing the residential zoning of the conversion area. There are no commercial land uses present due to authorization by special or conditional use permit.

2.4 The dual criteria of Section 2 of Schedule 70, to wit: (1) *residential zoning* and (2) *exclusive residential use* compliment each other. Exclusive residential use refers to the land uses actually located and receiving electricity within the conversion area despite the land use zoning designation.

2.5 The argument by PSE that street traffic is determinative of whether or not a conversion area is used exclusively for residential purposes is ludicrous and wholly unreasonable. No street is used for residential purposes. Streets are used for

1 transportation purposes. The only reasonable interpretation of Section 2 is that the
2 criteria of exclusive residential use references the land uses receiving electrical
3 current from the overhead facilities to be placed underground. Unreasonable
4 interpretations do not create ambiguity in the clear language of Section 2 simply
5 because another interpretation by conceivable. State v. Tili, 139 Wn.2d 115, 985 P.2d
6 365 (1995).

7 2.6 The factual statements about 92nd Ave. N.E. in the Response from PSE, including the
8 Declaration of Lynn Logan are a distortion of the function, use and character of the
9 street. The Clyde Hill City Administrator Mitchell Wasserman disputes the factual
10 averments made by PSE and Lynn Logan in his attached Declaration (Attachment B).
11 Unlike Mr. Logan who offers no credible verification for his statements from
12 documents identifying the character, use or function of 92nd Ave. N.E., Mr.
13 Wasserman provides such supporting documents to verify his statements. To the
14 extent the Commission determines the character, use or function of 92nd Ave. N.E.
15 even relevant to the issue of the application of Schedule 70, Mr. Wasserman's
16 description provides the only credible description upon which the Commission may
17 rely.

18
19 **b. The Three-Phase Distribution System.**

20
21 2.7 The existence of the three-phase feeder system along 92nd Ave. N.E. is factually
22 irrelevant except to advance the *boot strapping* arguments advanced by PSE. The
23 phasing of the overhead facilities is not an identified criterion in section 2 of schedule
24 70.

25 2.8 By PSE's own admissions in its arguments and factual averments, the existence of the
26 three phase *feeder backbone* is necessary only to provide non-residential loads to non-
27 residential users somewhere outside of the conversion area and somewhere outside
28 the City of Clyde Hill. PSE does not even disclose where the commercial users

1 necessitating the three-phase *feeder backbone* are located. PSE only identifies such
2 users as being in *other areas in PSE's system that require three-phase service*. See
3 PSE statement of fact no. 20.

4 2.9 PSE even acknowledges that, *[I]n general, PSE installs single-phase systems in areas*
5 *that are purely residential, and does not install three-phase systems in a residential*
6 *area unless load exists in the area that needs such a system. Normally, residential*
7 *areas are served by a single-phase branch of PSE's system that at some point ties into*
8 *one phase of PSE's three-phase feeders. In residential areas, any three-phase system*
9 *is generally limited to feeder backbone to carry load that the single-phase systems tap*
10 *off of, or to carry load from one commercial area to another through the residential*
11 *area... . See PSE statement of fact no. 19.*

12 2.10 The three-phase overhead distribution feeders along 92nd Ave. N.E. in Clyde Hill are
13 there only for the benefit of PSE and downstream commercial users outside of Clyde
14 Hill. It is unreasonable and against the public policy in RCW 80.28.074 and RCW
15 80.28.020 that Clyde Hill and its residents within the conversion area defined by the
16 LID boundary would pay any percentage of the extra costs of undergrounding the
17 three-phase distribution feeder. Application of schedule 70 fairly and reasonably
18 charges Clyde Hill and its residents for the conversion of the electrical facilities
19 desired by them. The additional costs are fairly and reasonably assumed by PSE
20 and/or by the commercial users needing the three-phase distribution system in their
21 rates and charges.

22 2.11 Section 2 of Schedule 70 make clear that as long as the existing overhead electric
23 distribution lines are of 15,000 volts or less, there is no other characteristic of the
24 existing overhead lines to be considered in determining the application of schedule
25 70.

1 be discriminated against? Such discrimination in rates as argued by PSE violates
2 RCW 80.28.020, RCW 80.28.074 (3), RCW 80.28.080²

3 2.15 The reference to “public thoroughfares within the Conversion Area” in subsection
4 3.b. of schedule 70 does not preclude application of the financial arrangements
5 required by schedule 70 from application to private drives within the conversion area.
6 “Centerline foot” can be as easily measured along private drives as it can along public
7 thoroughfares. Simply because the drafter of the tariff was thinking the usual and not
8 the practical realities of the real world where sometime in communities like Clyde Hill
9 there are residential lots off of private drives as well as public streets that does not
10 excuse the appropriate application of the tariff to the residential underground
11 conversion.

12 2.16 PSE’s assumption (for which it offers no authority) that it can simply charge whatever
13 it wants in the absence of a tariff, is contrary to statute and case law. See RCW
14 80.28.050 requires schedules showing all rates and charges. No electric company can
15 charge or demand or collect or receive a greater or less or different compensation for
16 a service as specified in its schedule filed and in effect at the time. In another
17 circumstance where a tariff did not cover all real world situations the Court did not
18 allow the unilateral imposition of charges. *In the absence of any tariff provision*
19 *covering the matter, the plaintiff would be entitled to receive the reasonable value of*
20 *the service rendered, and we uphold the trial court in its holding that the reasonable*
21 *value of the service was the through rate on the loads which were shipped through,*
22 *and the local rate on the abandoned car from the loading point to the point where the*
23 *car was unloaded and abandoned. Chicago, Milwaukee, and St. Paul R.R. Co. v.*
24 *Frye & Co., 109 Wash. 68, 74, 186 P. 668 (1919).*

25
26
27 ² PSE argues it can charge 100% of what it determines to be the costs of conversion outside of any tariff required by
28 RCW 80.28.050 for all rates and charges made, and further required by RCW 80.28.080 which prohibit charges outside
of a published tariff.

1 2.17 The issue of whether or not PSE can be required to underground its facilities on
2 private drives either by the property owner or the City of Clyde Hill raised by PSE in
3 paragraphs 63 through 66 of its Response is a red herring. The issue before the
4 Commission is what can be charged for the conversion. It does not matter if the
5 conversion occurs voluntarily by PSE or due to the demand of the City or of the
6 property owner. The authority of Clyde Hill to demand the underground conversion
7 on private drives is not an issue for the Commission to decide. Clyde Hill seeks a
8 determination of the applicable charges regardless of how the conversion comes
9 about.

10
11 **C. Power of the Commission to Require That The Existing Rates In Schedule 70**
12 **Remain In Effect For Clyde Hills LID Underground Conversion Project As Part Of**
13 **Its Order.**
14

15 2.18 PSE notes correctly that there is no Washington State case law on the issue of
16 whether or not Clyde Hill has a vested right to complete its LID project subject to the
17 rates currently in effect by the existing applicable tariff in schedule 70. The California
18 case it cited, Hargrave Secret Service v. PT&T, 78 CPUC 201, 1975 Cal. PUC LEXIS
19 306 (1975) is wholly inapplicable. Aside from being decided under California law, it
20 dealt with a totally different set of facts that did not involve rates or charges. It dealt
21 with the desire of local private investigators to be listed in the yellow pages under the
22 heading "Investigators" rather than "Detective Agencies".

23 2.19 It is unnecessary for the Commission to make new law on the issue of the vesting of
24 tariff rates and charges to a project of a City or a property owner. Existing
25 Washington State law already authorizes the Commission to order the existing rates
26 in Schedule 70 not be changed or altered for the Clyde Hill project. RCW 80. 04.150
27 provides that when the Commission finds that charges that are the subject of a
28 complaint *are sufficiently remunerative to the public service company affected*

1 *thereby, it may order that such rate, toll, rental or charge shall not be changed,*
2 *altered, abrogated or discontinued ...without first obtaining the consent of the*
3 *commission authorizing such change to be made. RCW 80.28.020 authorizes the*
4 *Commission to determine the just, reasonable, or sufficient rates, charges,*
5 *regulation, practices or contracts to be thereafter observed and in force, and to fix the*
6 *same by order.*

7 III. CONCLUSION

8 Schedule 70 applies to the underground conversion of existing overhead wires throughout the
9 entire conversion area, including the conversion work to be performed along 92nd Avenue NE and
10 within the private drives contiguous to the city streets in which the underground conversions are to
11 take place. The current schedule 70 should apply to the Clyde Hill Local Improvement District
12 underground conversion project unaffected by any future change in schedule 70 or the approval of
13 any new rates or charges in other tariffs for the underground conversion work identified in City of
14 Clyde Hill Local Improvement Ordinance No. 836. A ruling should be issued deciding the legal
15 issues in favor of the City of Clyde Hill and declaring that:

16 1. Tariff 70 applies to Clyde Hill Local Improvement District No. 2001-01 underground
17 conversion, which is in a residential area that is zoned and used exclusively for residential purposes,
18 regardless of whether the electrical system in the conversion area is single-phase or three-phase, or
19 within the public right-of-way, or within an easement along a contiguous private drive.

20 2. The maximum payment to PSE for the conversions described in Clyde Hill Local
21 Improvement District No. 2001-01 shall be the payments set forth in current Schedule 70,
22 notwithstanding any change in the current Schedule 70, or the adoption of any other tariff changes
23 prior to the completion by PSE of the conversion proscribed in Clyde Hill Local Improvement
24 District Ordinance 836.

1 DATED this 1st day of September, 2001.

2 OGDEN MURPHY WALLACE, P.L.L.C.

3
4 By: _____
5 Greg A. Rubstello, WSBA #6271
6 Attorneys for Petitioner
7 City of Clyde Hill
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I have this day served the CITY OF CLYDE HILL'S MOTION
3 FOR SUMMARY DETERMINATION, filed by the City of Clyde Hill, upon all parties of record in
4 this proceeding, via U.S. Mail:

5 Kirstin S. Dodge
6 Perkins Coie
7 411 - 108th Avenue NE, Suite 1800
8 Bellevue, WA 98004

9 Simon Fitch
10 Office of the Attorney General
11 900 Fourth Avenue, Suite 2000
12 Seattle, WA 98164-1012

13 Mary M. Tennyson
14 Office of the Attorney General
15 1400 South Evergreen Park Drive SW
16 PO Box 40128
17 Olympia, WA 98504-0128

18 Dennis J. Moss, Administrative Law Judge
19 Washington Utility and Transportation Commission
20 1300 South Evergreen Park Drive SW
21 PO Box 47250
22 Olympia, WA 98504-7250

23 Carol S. Arnold
24 Preston Gates Ellis
25 701 Fifth Avenue, Suite 5000
26 Seattle, WA 98104-7078

27 DATED at Seattle, Washington, this 1st day of September, 2001.
28

Anita Griffin
Legal Assistant to Greg A. Rubstello

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I. RULES AND STATUTES

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1 II. REPLY

2 PSE is wrong for the following reasons:

3
4 A. 92nd Ave. N.E. in Clyde Hill

5
6 a. Street Use, Function and Character.

7
8 2.1 Schedule 70 applies to the conversion of PSE's existing overhead facilities to
9 underground within the entire boundary of the conversion area, including along the
10 92nd Ave. N.E. portion of the conversion area (Attachment A), described in Clyde Hill
11 Ordinance #836 creating LID # 2001-01.

12 2.2 There is a single conversion area (Attachment A) with a single unbroken boundary
13 wherein all overhead electrical facilities are to be converted to underground facilities.

14 2.3 The single conversion area in question, including 92nd Ave. N.E. is *used exclusively*
15 *for residential purposes* consistent with both the area zoning and the actual land uses
16 within the conversion area. There are no commercial electrical load users within the
17 conversion area (or even within the entire City of Clyde Hill) served by the overhead
18 electrical facilities to be undergrounded by the LID conversion project. There are no
19 non-conforming commercial land uses pre-existing the residential zoning of the
20 conversion area. There are no commercial land uses present due to authorization by
21 special or conditional use permit.

22 2.4 The dual criteria of Section 2 of Schedule 70, to wit: (1) *residential zoning* and (2)
23 *exclusive residential use* compliment each other. Exclusive residential use refers to
24 the land uses actually located and receiving electricity within the conversion area
25 despite the land use zoning designation.

26 2.5 The argument by PSE that street traffic is determinative of whether or not a
27 conversion area is used exclusively for residential purposes is ludicrous and wholly
28 unreasonable. No street is used for residential purposes. Streets are used for

1 transportation purposes. The only reasonable interpretation of Section 2 is that the
2 criteria of exclusive residential use references the land uses receiving electrical
3 current from the overhead facilities to be placed underground. Unreasonable
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6 365 (1995).

7 2.6 The factual statements about 92nd Ave. N.E. in the Response from PSE, including the
8 Declaration of Lynn Logan are a distortion of the function, use and character of the
9 street. The Clyde Hill City Administrator Mitchell Wasserman disputes the factual
10 averments made by PSE and Lynn Logan in his attached Declaration (Attachment B).
11 Unlike Mr. Logan who offers no credible verification for his statements from
12 documents identifying the character, use or function of 92nd Ave. N.E., Mr.
13 Wasserman provides such supporting documents to verify his statements. To the
14 extent the Commission determines the character, use or function of 92nd Ave. N.E.
15 even relevant to the issue of the application of Schedule 70, Mr. Wasserman's
16 description provides the only credible description upon which the Commission may
17 rely.

18
19 **b. The Three-Phase Distribution System.**

20
21 2.7 The existence of the three-phase feeder system along 92nd Ave. N.E. is factually
22 irrelevant except to advance the *boot strapping* arguments advanced by PSE. The
23 phasing of the overhead facilities is not an identified criterion in section 2 of schedule
24 70.

25 2.8 By PSE's own admissions in its arguments and factual averments, the existence of the
26 three phase *feeder backbone* is necessary only to provide non-residential loads to non-
27 residential users somewhere outside of the conversion area and somewhere outside
28 the City of Clyde Hill. PSE does not even disclose where the commercial users

1 necessitating the three-phase *feeder backbone* are located. PSE only identifies such
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12 2.10 The three-phase overhead distribution feeders along 92nd Ave. N.E. in Clyde Hill are
13 there only for the benefit of PSE and downstream commercial users outside of Clyde
14 Hill. It is unreasonable and against the public policy in RCW 80.28.074 and RCW
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16 LID boundary would pay any percentage of the extra costs of undergrounding the
17 three-phase distribution feeder. Application of schedule 70 fairly and reasonably
18 charges Clyde Hill and its residents for the conversion of the electrical facilities
19 desired by them. The additional costs are fairly and reasonably assumed by PSE
20 and/or by the commercial users needing the three-phase distribution system in their
21 rates and charges.

22 2.11 Section 2 of Schedule 70 make clear that as long as the existing overhead electric
23 distribution lines are of 15,000 volts or less, there is no other characteristic of the
24 existing overhead lines to be considered in determining the application of schedule
25 70.

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C00241

1 be discriminated against? Such discrimination in rates as argued by PSE violates
2 RCW 80.28.020, RCW 80.28.074 (3), RCW 80.28.080²

3 2.15 The reference to “public thoroughfares within the Conversion Area” in subsection 3.b.
4 of schedule 70 does not preclude application of the financial arrangements required by
5 schedule 70 from application to private drives within the conversion area. “Centerline
6 foot” can be as easily measured along private drives as it can along public
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8 the practical realities of the real world where sometime in communities like Clyde Hill
9 there are residential lots off of private drives as well as public streets that does not
10 excuse the appropriate application of the tariff to the residential underground
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18 allow the unilateral imposition of charges. *In the absence of any tariff provision*
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20 *the service rendered, and we uphold the trial court in its holding that the reasonable*
21 *value of the service was the through rate on the loads which were shipped through,*
22 *and the local rate on the abandoned car from the loading point to the point where the*
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24 *& Co., 109 Wash. 68, 74, 186 P. 668 (1919).*

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2 private drives either by the property owner or the City of Clyde Hill raised by PSE in
3 paragraphs 63 through 66 of its Response is a red herring. The issue before the
4 Commission is what can be charged for the conversion. It does not matter if the
5 conversion occurs voluntarily by PSE or due to the demand of the City or of the
6 property owner. The authority of Clyde Hill to demand the underground conversion
7 on private drives is not an issue for the Commission to decide. Clyde Hill seeks a
8 determination of the applicable charges regardless of how the conversion comes
9 about.

10
11 **C. Power of the Commission to Require That The Existing Rates In Schedule 70**
12 **Remain In Effect For Clyde Hills LID Underground Conversion Project As Part Of**
13 **Its Order.**

14
15 2.18 PSE notes correctly that there is no Washington State case law on the issue of whether
16 or not Clyde Hill has a vested right to complete its LID project subject to the rates
17 currently in effect by the existing applicable tariff in schedule 70. The California case
18 it cited, Hargrave Secret Service v. PT&T, 78 CPUC 201, 1975 Cal. PUC LEXIS 306
19 (1975) is wholly inapplicable. Aside from being decided under California law, it dealt
20 with a totally different set of facts that did not involve rates or charges. It dealt with
21 the desire of local private investigators to be listed in the yellow pages under the
22 heading "Investigators" rather than "Detective Agencies".

23 2.19 It is unnecessary for the Commission to make new law on the issue of the vesting of
24 tariff rates and charges to a project of a City or a property owner. Existing
25 Washington State law already authorizes the Commission to order the existing rates in
26 Schedule 70 not be changed or altered for the Clyde Hill project. RCW 80. 04.150
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28 complaint *are sufficiently remunerative to the public service company affected*

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DATED this 1st day of September, 2001.

OGDEN MURPHY WALLACE, P.L.L.C.

By: 

Greg A. Rubstello, WSBA #6271
Attorneys for Petitioner
City of Clyde Hill

00246

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I have this day served the CITY OF CLYDE HILL'S MOTION
3 FOR SUMMARY DETERMINATION, filed by the City of Clyde Hill, upon all parties of record in
4 this proceeding, via U.S. Mail:

5 Kirstin S. Dodge
6 Perkins Coie
7 411 - 108th Avenue NE, Suite 1800
8 Bellevue, WA 98004

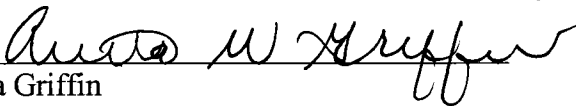
9 Simon Fitch
10 Office of the Attorney General
11 900 Fourth Avenue, Suite 2000
12 Seattle, WA 98164-1012

13 Mary M. Tennyson
14 Office of the Attorney General
15 1400 South Evergreen Park Drive SW
16 PO Box 40128
17 Olympia, WA 98504-0128

18 Dennis J. Moss, Administrative Law Judge
19 Washington Utility and Transportation Commission
20 1300 South Evergreen Park Drive SW
21 PO Box 47250
22 Olympia, WA 98504-7250

23 Carol S. Arnold
24 Preston Gates Ellis
25 701 Fifth Avenue, Suite 5000
26 Seattle, WA 98104-7078

27 DATED at Seattle, Washington, this 1st day of September, 2001.

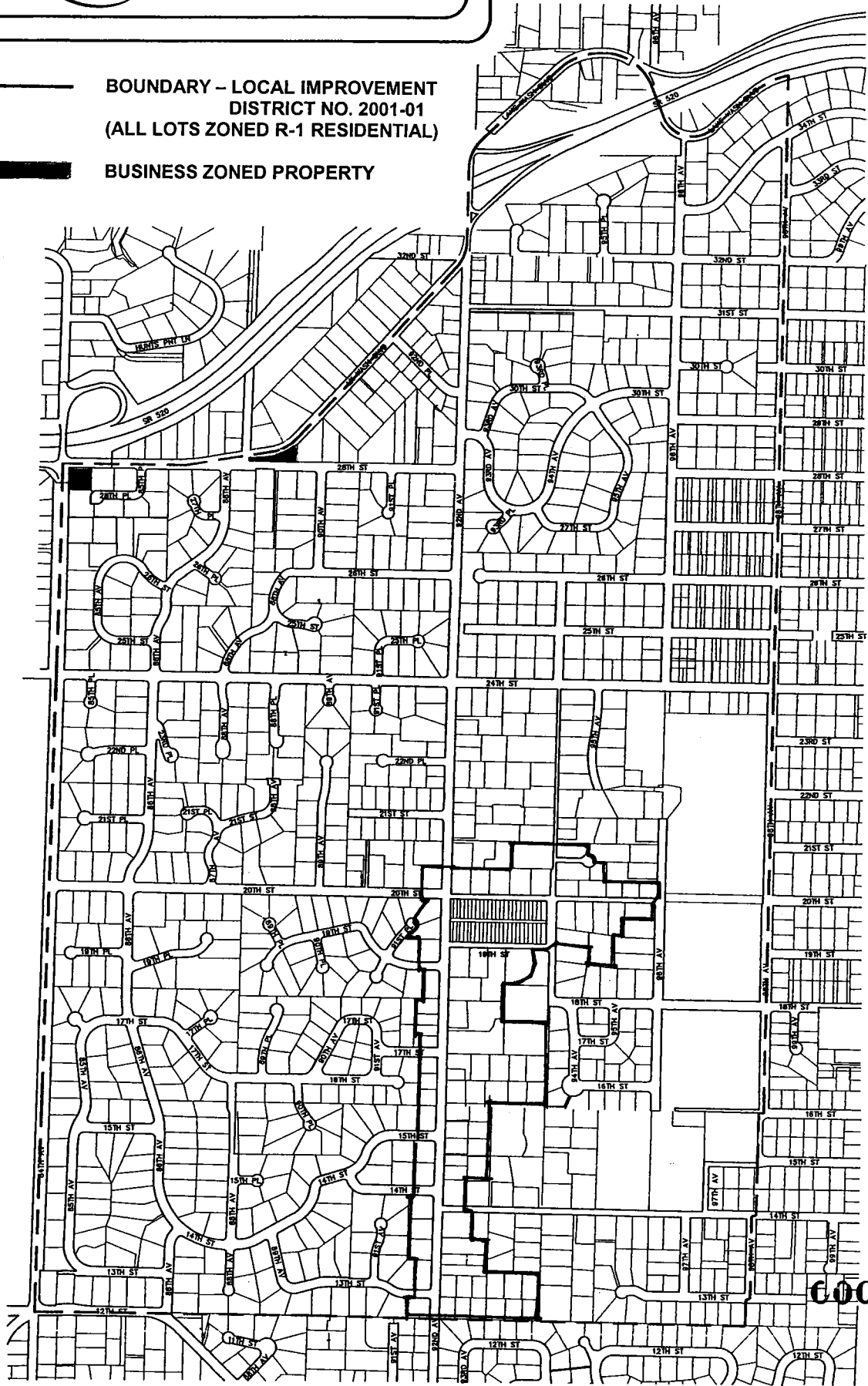
28 
Anita Griffin
Legal Assistant to Greg A. Rubstello

C00247



EXHIBIT G

- BOUNDARY – LOCAL IMPROVEMENT DISTRICT NO. 2001-01 (ALL LOTS ZONED R-1 RESIDENTIAL)
- BUSINESS ZONED PROPERTY



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DECLARATION OF MITCH WASSERMAN

MITCH WASSERMAN declares and states as follows:

1. I am the City Administrator for the City of Clyde Hill and make this declaration in that capacity. I am over the age of 18 and am competent to testify to the matters contained herein.
2. There were statements made in PSE's Response to the City of Clyde Hill's Motion and in the Declaration of Lynn Logan that I feel compelled to respond to in order to set the record straight.

C00251

1 3. The following excerpts from the "Statements of Fact" in PSE's Response to Motions
2 for Summary Determination and Cross Motion for Summary Determination are inaccurate and
3 misleading:

4 Statement of Fact 13:

5 In addition, 92nd Avenue NE in Clyde Hill is not used exclusively for
6 residential purposes. Clyde Hill has two main through streets, 92nd
7 Avenue NE and NE 24th Street. 92nd Avenue NE is significantly wider
8 than the side streets that branch off of it. It connects to NE 8th Street,
9 which is a primary point of entry into Clyde Hill from Bellevue's
10 downtown commercial areas and continues all the way through Clyde
11 Hill to approximately NE 34th Street and the entrance to State
12 Highway 520. This contrasts with the other public side streets in the
13 Clyde Hill LID boundary, where PSE has agreed that Schedule 70
14 applies, as shown on Exhibit D, pink highlighting. Logan Aff., at ¶18,
15 Stipulated Exhibit No. 6, Exhibit 1. Clyde Hill city ordinance describes
16 "92nd Avenue NE, from NE 12th Street to State Route 520" as a
17 "collector arterial," and not as a "local access road." Clyde Hill
18 ordinance at §12.04.020, attached at Addendum 21-22.

19 Statement of Fact 31:

20 These areas are not used exclusively for residential purposes in that the
21 streets containing facilities that are being converted to underground
22 carry traffic not just to and from the residential dwellings in the
23 immediate area, but serve to route traffic through the residential area to
24 and from surrounding commercial areas and roadways...92nd Avenue
25 NE in Clyde Hill carries traffic from commercial areas in Bellevue
26 through Clyde Hill to State Highway 520, and is otherwise used for
27 purposes other than access to the residential dwellings in the
28 conversion area.

1 4. The following statement from the affidavit of Lynn F. Logan is also inaccurate and
2 misleading:

3 18. I have personally inspected 92nd Avenue NE in Clyde Hill and
4 the surrounding area. 92nd Avenue NE is significantly wider than the
5 side streets that branch off of it. Clyde Hill has two main through
6 streets, 92nd Avenue NE and NE 24th Street, as evidenced on the
7 Thomas Bros. Maps, a copy of which is attached hereto as Exhibit I,
8 and as shown in Stipulated Exhibit No. G submitted by Clyde Hill, a
9 copy of which is also attached hereto. 92nd Avenue NE connects to
10 NE 8th Street, which is a primary point of entry into Clyde Hill from
11 Bellevue's downtown commercial areas. It continues all the way
12 through Clyde Hill to approximately NE 34th Street and the entrance
13 to State Highway 520. This contrasts with the other public side streets
14 in the Clyde Hill LID boundary, where PSE has agreed that schedule
15 70 applies, as shown on Exhibit D, pink highlighting.

000252

1 5. Although Mr. Logan may have examined city streets in the conversion area and
2 observed the width of the road, unfortunately he did not gain a true understanding of the function or

1 character of 92nd Ave. N.E. by that experience. This is proven out in a few ways that I have set forth
2 below.

3 6. The statement that 92nd Avenue NE in Clyde Hill is "significantly wider than the side
4 streets that branch off of it" is an exaggeration. Attached to this declaration is Figure 13 from the
5 Clyde Hill Comprehensive Plan showing the specifications of the city's "street classifications." A
6 *collector arterial* is 36 feet from gutter to gutter while a *local access road* is 28 feet from gutter to gutter.
7 The 8 foot difference in actuality allows for striped walkways on each side of 92nd Ave. N.E. The
8 actual paved portion of the roadway for vehicular traffic is the same width on 92nd Ave. N.E. as it is
9 for the local access roads connected to it. The fact that striping is required on a collector arterial,
10 while it is not required on a local access road, actually provides for slightly narrower traffic lanes on
11 92nd Avenue N.E. than there are on the local access roads that connect to it.

12 7. In Section 12.04.020 of the Clyde Hill Municipal Code, the City of Clyde Hill has
13 classified its road system into 4 different categories: Principal Arterials and State Routes, Minor
14 Arterials, Collector Arterials and Local Access Roads. 92nd Avenue NE is classified as a Collector
15 Arterial, the second lowest road classification in this system. These classifications are further
16 enumerated in Clyde Hill's Comprehensive Plan where the purpose of a collector arterial is defined at
17 page 26 (Copy Attached):

18 "The function of this category of street is to collect and distribute traffic from higher capacity
19 streets to local access streets. Collector Arterials should be designed to function as a
20 neighborhood arterial serving a particular area of the community and provide connections for
21 traffic that has an origin or destination that is local."

22 8. Clyde Hill and the City of Bellevue have continuously worked together to emphasize
23 that none of our community's roads should be used for the purpose implied by the PSE statement. If
24 92nd Avenue NE were to be considered "a primary point of entry into Clyde Hill from Bellevue's
25 downtown commercial areas" then the City of Bellevue would surely want to improve their roads
26 leading to 92nd to accommodate and facilitate this flow. On the contrary, nowhere in the City of
27 Bellevue's most current 6-year Transportation Improvement Plan does it show any such project. In
28 addition, Bellevue recently published a pamphlet entitled Downtown Bellevue Projects Update (Summer

1 2001). This booklet was developed to demonstrate the projects they are working on to improve travel
2 to, from, and within downtown Bellevue. Absent in this publication is any mention of improving the
3 roadway system west of downtown into the Clyde Hill area. All projects are facilitating traffic in other
4 directions. This emphasis is not surprising because the Bellevue roads that are west of the downtown
5 are also of a residential nature and their community does not want to facilitate commercial traffic either.
6 In addition, it is the adopted policy of the City of Clyde Hill to *develop strategies and work with*
7 *adjacent communities to minimize through traffic on the City's¹ streets.* See page 35 from the city's
8 Comprehensive Plan attached to this declaration as an exhibit.

9 9. Clyde Hill has never designed 92nd or any other road in the community to
10 accommodate "outside" traffic. On the contrary, the community in no way tolerates using its residential
11 streets for commercial purposes outside of its direct needs and has taken steps throughout the years to
12 emphasize this point. A good example of this is reflected in the 2000 passage of regulations that
13 prohibits commercial truck traffic in excess of 40' from traveling through any Clyde Hill street,
14 including 92nd Avenue NE. In addition, the types of traffic calming intersection designs that are now
15 found along 24th Street and are being contemplated along 92nd Avenue are also indicative of a purely
16 residential street and are not conducive to a commercial use.

17 10. The traffic volumes on 92nd Avenue NE do not factually demonstrate the picture the
18 PSE representative has painted. A primary route from downtown Bellevue would carry thousands of
19 cars a day to and from the city. Clyde Hill's most recent traffic count (May 2000) on 92nd Avenue NE
20 shows that 1,400 (southbound) to 1,900 (northbound) cars travel on that road per day. This is contrasted
21 with the counts from the primary route going from downtown Bellevue to SR 520, Bellevue Way. A
22 1999 Bellevue count at Bellevue Way and NE 24th Street shows that this street facilitated about 2,100
23 cars per hour during the peak traffic times. It is also interesting to note that the average traffic volumes
24 on 92nd Avenue NE in 1991 (Shown in the Clyde Hill Comprehensive Plan) were about 2,300 cars per day,
25 higher than they are today. These early counts were taken before many of the new development took
26 place in downtown Bellevue. If 92nd Avenue NE functioned to route traffic through the residential

27 ¹ The City of Clyde Hill was a Town when the Comprehensive Plan was adopted. The plan's language was not changed
28 when Clyde Hill adopted the code city classification.

C00254

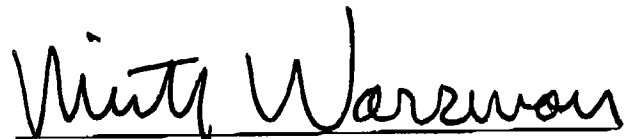
1 area to and from surrounding commercial areas one would clearly see an increasing traffic trend, not
2 one that has actually decreased.

3 11. I should also point out that the Clyde Hill community in conjunction with a number of
4 its boarding sister cities and towns routinely meet to discuss ways to limit and discourage the type of
5 use on all of our residential streets that is described in the above statements from PSE.

6 12. Based on the road's classification, character, the regulations governing traffic on the
7 roads, actual traffic counts and the understandings between and among surrounding communities,
8 92nd Avenue NE should be thought of as the type of street it is, a neighborhood arterial serving the
9 Clyde Hill community.

10 I declare under penalty of perjury under the laws of the State of Washington that the
11 foregoing declaration is true and correct.

12 DATED this 31st day of August, 2001.

13 
14 Mitch Wasserman
15 Mitch Wasserman

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C00255

TOWN OF CLYDE HILL STREET CLASSIFICATIONS

7/23/92

Classification	Streets	Lighting	Walks	Striping	Bus Access	Town Maintained	
						R.O.W. Landscaping	Pavement Cross Section
Local Access Roads:							
Local Access Class 3	Cul-de-sacs	Not Required Initiated from resident concerns***	Only When Necessary For Safety	Only When Necessary For Safety	No	No	28' Gutter to Gutter
Local Access Class 2	Feeder Streets						
Local Access Class 1	Partial Through Streets **See Note Below	Town should provide where appropriate	Walkway	Centerline & Walkway	No	Where Appropriate	28' Gutter to Gutter
Collector Arterial							
	24th Street (84th to 98th)	Yes	Walkway	Per MUTC*	Yes	Where Appropriate	36' Gutter to Gutter
	92nd Avenue (12th to SR 520)		Walkway				
	Points Drive (84th to 92nd)		Sidewalk				
Minor Arterial							
	12th Street (86th to 84th)	Yes	Sidewalk	Per MUTC*	Yes	Yes	44' Gutter to Gutter
	84th Avenue (12th to SR 520)		Sidewalk				
Principal Arterial and State Routes							
	State Route 520	Yes	No	Per MUTC*	Yes	No	Up to 8 lanes

**20th Street (84th to 92nd)
14th Street (92nd to 98th)
98th Avenue (16th to 34th)
96th Avenue (24th to 34th)

***Resident provides for installation. Town picks up long term maintenance and energy costs.

*Manual on Uniform Traffic Control Devices

C00256

- High traffic volumes, congestion and noise on and along 84th Avenue NE, generally during peak afternoon commuting periods, as traffic moves to and from SR 520.
- Traffic volumes and congestion on streets intersecting NE 24th Street, primarily the result of traffic bound for schools or 84th Avenue NE.
- Traffic volumes and congestion on streets adjacent to the schools and concern for the safety of pedestrians, particularly school children. There is also the problem of spill-over parking onto neighborhood streets from the schools and church.
- Traffic volumes, congestion and awkward intersection design at 92nd Avenue NE and NE Points Drive.

Functional Classifications:

A four tiered classification system will continue to be used in categorizing the functional characteristics of the community's street system (see Figure 9). It is as follows.

Principal Arterial and State Routes: SR 520 abuts the northern boundary of Clyde Hill and is the only regional highway with direct Town access. Two off-ramps provide access to community arterials: one east-bound exiting onto 84th Avenue NE and Points Drive, and one west-bound exiting onto 92nd Avenue NE. Similarly there is a west-bound on-ramp off 84th Avenue NE and an east-bound on-ramp off of 92nd Avenue NE. SR 520 serves as a regional connector between communities on either side of Lake Washington.

Minor Arterials: These streets serve to expedite movement of traffic to major centers and distribute vehicles from highways to secondary arterials and local access streets. Minor arterials should be located along community and neighborhood boundaries. The minor arterials include the following streets:

- 84th Avenue NE from NE 12th Street to NE 28th Street (Points Drive)
- NE 12th Street from 84th Avenue NE to ^{SE}98th Avenue NE.

Collector Arterials The function of this category of street is to collect and distribute traffic from higher capacity streets to local access streets. Collector Arterials should be designed to function as a neighborhood arterial serving a particular area of the community and provide connections for traffic that has an origin or destination that is local. Streets in this classification are:

- Points Drive from 84 Avenue NE to 92 Avenue NE
- NE 24th Street from 84th Avenue NE to 98th Avenue NE
- 92nd Avenue NE from NE 12th Street to SR 520

C00257

Pedestrians and Bicycles:

Pedestrian activity is associated with exercise, recreation and travel between points within the Town. To improve the pedestrian experience, walkways should be developed along the Town's arterial streets. This would not only make walking easier for those with impaired mobility but would also provide a greater level of safety if through traffic were to substantially increase. Pedestrian improvements should also be planned so as to connect with pedestrian trails and walkways in adjacent communities, thus completing a larger pedestrian system.

Bicycle use is primarily recreational. Again consideration should be given to providing some arterials with bicycle lanes to facilitate safety and ease of travel. At the county level there have been discussions of eventually developing a bikeway along SR 520 that would connect the east and west sides of the lake with the aim of having a regional system of bicycle routes. Clyde Hill supports this proposal and will participate, in activities to implement such a plan.

GOALS AND POLICIES

Goal: To maintain the street system to accommodate various modes of transportation at reasonable operating levels while protecting the Town character.

Policy 1

Develop strategies and work with adjacent communities to minimize through traffic on the Town's streets.

Policy 2

Maintain the efficiency of traffic flow by monitoring traffic, upgrading traffic control devices as appropriate and developing traffic management techniques and keeping regular traffic counts.

Policy 3

Assure that streets are designed and constructed to Town standards to efficiently and effectively meet the needs of the community.

Policy 4

Maintain the physical condition of the street system and identify and improve those sections that are in need of repair and upgrading.

Policy 5

Provide sufficient illumination at those intersections that are potentially hazardous.

Goal: To encourage and support the development of a fully accessible public transportation system that will accommodate the present and future travel demands of the community.

Policy 1

Work with METRO to provide improved transit services for Town residents.

C00258