

Meyers, Aundrea

From: Legg, Louisa on behalf of Hearing Examiner
Sent: Wednesday, December 2, 2020 2:26 PM
To: kathleen@bradtrees.com; MINHRAU49@gmail.com; ptkwck@me.com; fdwilliams@nventure.com
Cc: Rodriguez, Ralph; Garrison, Michael; Meyers, Aundrea
Subject: FW: Proposed Formation LID 8663 - HEX Findings of Fact, Conclusions of Law and Recommendation
Attachments: SIGNED_Proposed_Formation_LID8663_12.02.20.pdf
Importance: High

Dear Parties,

My apologies that your individual email address was incorrect in my earlier email message sent this morning.

Sincerely,

Louisa Legg

Office Administrator

Tacoma Hearing Examiner Office

Ph: 253-591-5195 | Fax: 253.591.2003

Hearing.examiner@cityoftacoma.org

From: Legg, Louisa **On Behalf Of** Hearing Examiner
Sent: Wednesday, December 2, 2020 9:07 AM
To: Rodriguez, Ralph <RRODRIG1@cityoftacoma.org>; Garrison, Michael <mgarrison@cityoftacoma.org>; Mitchie2@yahoo.com; Jimgayletotten@comcast.net; paulapostlejr@gmail.com; dhapostle@gmail.com; Mitchie2@yahoo.com; markgallinatti@outlook.com; sgchnogler@msn.com; bowmanjenny@yahoo.com; burranderson@gmail.com; kbreader@me.com; sharlow@wamail.net; b.michael.cushman@gmail.com; fdwilliams@venture.com; cuahingja@yahoo.com; scottnowasky@comcast.net; boatbuilder52@msn.com; gayleholm@msn.com; BrianLawson79@hotmail.com; hammerntooth@hotmail.com; banewton123@hotmail.com; michlong3081@comcast.net; Jillian.strayer@gmail.com; dhoward@harbournet.com; katrina.webb@ymail.com; vickimurphy1958@gmail.com; vrferguson@harbournet.com; gretchen@betterproperties.com; jack@adspecialtyproductsinc.com; ladncd@hotmail.com; deborahherforth@yahoo.com; joanna@alumni.unc.edu; samcl75@gmail.com; jack@adspecialtyproductsinc.com; southern_weyrman@hotmail.com; ladncd@hotmail.com; Fareed.Assad@yahoo.com; deborahherforth@yahoo.com; MINHRAU49@gmail.com; REOEBill222@conservice.com; PowderDog@wamail.net; goowe68@gmail.com; maxwrt@gmail.com; waughtel33@gmail.com; ptkwck@me.com; waughtel33@gmail.com; TLBrain@live.com; baba.stewart@gmail.com; JTDWolf@comcast.net; Hughes3187@msn.com; Kirby12343@msn.com; CMVA60@gmail.com; cherbearsch@aol.com; JasonMStrayer@gmail.com; LWIB@mac.com; peairs_family@yahoo.com; hovertac@gmail.com; markgallinatti@outlook.com; jack@adspecialtyproductsinc.com; kbreader@me.com; kathlee@bradtrees.com; mitchie2@yahoo.com; burranderson@gmail.com; vickimurphy1958@gmail.com; vickimurphy@harbournet.com; ladncd@hotmail.com; b.michael.cushman@gmail.com; dhapostle@gmail.com; joanna@alumni.unc.edu; samcl75@gmail.com; southern_weyrman@hotmail.com; sharlow@wamail.net; Fareed.Assad@yahoo.com; dhoward@harbournet.com; deborahherforth@yahoo.com; gayleholm@msn.com; MINHRAU49@gmail.com; hammerntooth@hotmail.com; katrina.webb@ymail.com; jimgayletotten@comcast.net; gretchen@betterproperties.com; sgchnogler@msn.com; vrferguson@harbournet.com; CushingJa@hotmail.com; cuahingja@yahoo.com; PowderDog@wamail.net; scottnowasky@comcast.net; banewton123@hotmail.com; goowe68@gmail.com; BennyJo@ymail.com; maxwrt@gmail.com;

waughtel33@gmail.com; ptkwck@me.com; TLBrain@live.com; Keva.K.Peairs@kp.org; BrianLawson79@hotmail.com; trinityreid253@hotmail.com; baba.stewart@gmail.com; JTDWolf@comcast.net; Hughes3187@msn.com; cherbearsch@aol.com; Kirby12343@msn.com; CMVA60@gmail.com; jillian.strayer@gmail.com; JasonMStrayer@gmail.com; ladncd@hotmail.com

Cc: Meyers, Aundrea <AMeyers@cityoftacoma.org>; Jenkins, Jessica <jjenkins1@cityoftacoma.org>

Subject: Proposed Formation LID 8663 - HEX Findings of Fact, Conclusions of Law and Recommendation

Importance: High

Dear Parties,

In regard to the above referenced matter, please find attached the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council, entered on December 2, 2020.

Sincerely,

Louisa Legg

Office Administrator

Tacoma Hearing Examiner Office

Ph: 253-591-5195 | Fax: 253.591.2003

Hearing.examiner@cityoftacoma.org



City of Tacoma
Hearing Examiner

December 2, 2020

TO THE PARTIES
(See Transmittal List Below)

Re: Proposed Formation - Local Improvement District (LID) No. 8663

Dear Parties,

In regard to the above referenced matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation, to the Tacoma City Council, entered on December 2, 2020.

Sincerely,

LOUISA LEGG
Office Administrator

Enclosure (1): Findings, Conclusions, and Recommendation

Transmittal List

PCA Band NY Mellon NA, c/o Michael Dephillips, ATTN: James H. Wiborg,

385 Rifle Camp Rd – FL 5, Woodland Park NJ 07424-3200

Bradley Hoover, 4801 N Mullen St, Tacoma WA 98407-4505

US Bank Trust, c/o WRI Property Mgmt LLC, 3630 Peachtree Rd NE,
STE 1500, Atlanta GA 30326-1552

Joseph D. Snope, Kimberly M. Snope, 3618 N Mullen St, Tacoma WA 98407-4125

Shirley R. Burdick, 3625 N Ferdinand St, Tacoma WA 98407-4113

Cc: Ralph Rodriguez, MA III, LID Administrator, City of Tacoma, Public Works
Michael Garrison, LID Representative, City of Tacoma Public Works

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **PROPOSED LOCAL**
5 **IMPROVEMENT DISTRICT**
6 **NO. 8663**

HEX2020-033

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

7
8 **A PUBLIC HEARING** on the above-captioned matter was held on November 9, 2020,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma (the “City”).¹ The Hearing
10 Examiner having considered the testimony and evidence presented, having reviewed the file, and
11 being otherwise fully advised, makes the following:

12 **FINDINGS OF FACT**

13 1. The Tacoma City Council adopted Resolution No. 40673 on October 20, 2020 (the
14 “Hearing Resolution”), addressing the potential formation of Local Improvement District No. 8663
15 (“the LID” or “LID 8663”).² The Hearing Resolution was the result of (among other efforts) a
16 number of Advisory Surveys the City distributed to property owners, and then received back signed
17 by certain property owners within the LID.³ Based on these Advisory Surveys, the City’s

18
19
20 ¹ Due to National, State of Washington (“State”) and City of Tacoma Proclamations of Emergency caused by the
21 COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or
around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom
teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in
number on Zoom. Because of the number of participants, the number of outstanding questions, and also due to the
format of the hearing, the record was left open until November 13, 2020, for the submission of additional written
comments, a number of which were received and all were reviewed on the way to the issuance of this
Recommendation.

² Local improvement districts may be referred to herein generally as “LID”s as well.

³ These Advisory Surveys are found in the record as Exhibits C-6.1, C-6.2, C-8.1~C-8.6, and C-10.2.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 1

City of Tacoma
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Tacoma Municipal Building
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1 Department of Public Works (“DPW”) LID Section staff determined that there was sufficient
2 property owner support to bring LID 8663 before the City Council to schedule a formation
3 hearing.⁴ *Rodriguez Testimony, Ex. C-11.*

4 2. The Hearing Resolution formally set a hearing date of November 9, 2020, to consider
5 the formation of LID 8663. The locations included in LID 8663, and the improvements proposed,
6 are grouped by neighborhood “segments” and are described in the Hearing Resolution as follows:

7 To establish permanent pavement with a structural section, together with
8 the installation of concrete curbs, gutters, surface water mains, and surface
9 water catch basins, where needed on the following streets:

9 **Segment 1** - North 43rd Street from Frace Avenue to Lexington Street, also
10 Lexington Street from North 43rd Street to North 45th Street;

11 **Segment 2** - Mullen Street from North 48th Street north to the dead end;
12 and

12 **Segment 3** - Mullen Street from North 47th Street to North 48th Street.

13 Also, permanent alley pavement with a structural section, surface water
14 mains, and surface water catch basins, where need in:

15 **Segment 4** - The alley between Mullen Street and Ferdinand Street, North from North
16 36th Street to North 37th Street (the “Improvements”). *See also Ex. C-1, Ex. C-8, Ex.
17 C-9, Ex. C-10, Ex. C-11, Ex. C-12.*⁵

17 The Hearing Resolution states that other improvements in the overall project may include driveway
18 entrances, wastewater lateral connections from the wastewater main to the property line; the
19 removal and planting of trees; and all other work necessary to complete the same in accordance
20
21

⁴ The City’s Advisory Surveys are a tool used in tallying preliminary support/opposition to formation at the early stages of the process. They are not necessarily a definitive statement of either support or opposition.

⁵ Unless otherwise indicated, references to single numbered main exhibits will include their subparts as well, e.g., a reference to Exhibit C-3 would include subpart Exhibits C-3.1 and C-3.2, and etc., as applicable.

1 with plans and specifications to be prepared by the Tacoma City Engineer. The Hearing Resolution
2 is incorporated herein by reference as though fully set forth.

3 3. At the hearing, it was made clear that the streets in Segments 1, 2 and 3 are all slated
4 to be paved with funds from the City's 2019 Streets Initiative Package 17, but that the LID property
5 owners were presented the option, at a series of meetings (*see Finding of Fact 4*), to essentially
6 upgrade the paving and add curb and gutter to the paving project through the formation of a local
7 improvement district, with the ultimate LID assessments covering (at least in part) the added cost
8 of the upgraded improvements. *Rodriguez Testimony; Ex. C-1, Ex. C-3.3*. The difference between
9 what the City would do under the 2019 Streets Initiative Package 17, and what would be upgraded
10 to by formation of the LID is illustrated at Exhibit C-3.9 and Exhibit C-3.10.

11 4. Separate from the street upgrades, the Segment 4 alleyway got rolling when (a) certain
12 property owner(s) along that alley section saw a nearby alley that was recently paved, and they
13 inquired of the City what it would take for their alleyway to be improved in like manner. *Rodriguez*
14 *Testimony, Ex. C-10.*⁶

15 5. The proposed boundary of the LID, broken out by segments, is legally described in
16 the Hearing Resolution as follows:

17 **[Segment 1] - North 43rd Street from Frace Avenue to Lexington Street, also**
18 **Lexington Street from North 43rd Street to North 45th Street**

19 Those portions of the Southwest Quarter of the Southwest Quarter of Section 23,
20 Township 21 North, Range 02 East, W.M., described as follows:

21 The South 35 feet of Lot 5, all of Lots 6 through 9, inclusive, Lots 11 and 12, Block
1; The West 90 feet of Lots 1 through 7, Block 3; The East 191.4 feet of the North
120 feet of Block 'A'; all in **Wiborg's Narrows View Addition to Tacoma**,

⁶ It appears that the main property owner behind this effort, Jack Joseph, is no longer the property owner at 3631 North Ferdinand Street. *See Ex. C-15*.

1 Washington, according to the plat thereof recorded in Volume 12, Page 47, filed
2 April 8, 1942, records of Pierce County Auditor.

3 Together with the East 140 feet of Parcel 'B', City of Tacoma Boundary Line
4 Adjustment, recorded under Recording Number 9906035005, records of Pierce
5 County Auditor.

6 All situate in the City of Tacoma, County of Pierce, State of Washington.

7 **[Segment 2] - Mullen Street from North 48th Street north approximately 240**
8 **feet**

9 Those portions of the Northwest Quarter of the Southwest Quarter of Section 24,
10 Township 21 North, Range 02 East, W.M., described as follows:

11 Lots 11 through 16, Block 1, and Lots 2 through 8, Block 2, **West Tacoma, W.T.**,
12 according to the plat recorded in Volume 1, Page 24, filed September 13, 1871,
13 records of Pierce County Auditor;

14 Together with the Northerly 20 feet of North 48th Street vacated per City of
15 Tacoma Ordinance No. 17056, recorded under Recording Number 1853653,
16 records of Pierce County Auditor, abutting said Lot 16, Block 1;

17 EXCEPT those portions of said Lots 11 through 14, lying North of the following
18 described line; Beginning on the West line of Lot 11, 26.5 feet North of the
19 Southwest corner of said Lot 11, thence Southeasterly to a point on the South line
20 of Lot 11, 15.6 feet East of said Southwest corner, thence Southeasterly to a point
21 on the South line of Lot 12, 39 feet East of the Southwest corner of said Lot 12,
thence Southeasterly to a point on the South line of Lot 13, 95 feet East of the
Southwest corner of said Lot 13, thence Southeasterly to the Southeast corner of
Lot 14, and the terminus of herein described line in Block 1;

Also EXCEPT that portion of said Lot 2, lying Northerly of the following
described line; Beginning at a point on the West line of said Lot 2, 38 feet South
the Northwest corner of said lot, thence East parallel to the South line of said Lot 2,
55 feet, thence Northeasterly to a point on the North line of said Lot 2 70 feet East
of the Northwest Corner of said lot, thence Southeasterly to a point on the East line
of said Lot 2 30 feet South of the Northeast corner said lot, and the terminus of
herein described line in Block 2;

All situate in the City of Tacoma, County of Pierce, State of Washington.

1 **[Segment 3] - Mullen Street from North 47th Street to North 48th Street**

2 Those portions of the Northwest Quarter of the Southwest Quarter of Section 24,
3 Township 21 North, Range 02 East, W.M., described as follows:

4 Lots 1 through 8, Block 7 and Lots 9 through 16, Block 8, **West Tacoma, W.T.**
5 according to the plat recorded in Volume 1, Page 24, filed September 13, 1871,
6 records of Pierce County Auditor;

7 Together with the Southerly 10 feet of North 48th Street vacated per City of
8 Tacoma Ordinance No. 17056, abutting said Lot 9, Block 8;

9 And together with the Northerly 10 feet of North 47th Street vacated per City of
10 Tacoma Ordinance No. 16173, abutting said Lot 16, Block 8;

11 All situate in the City of Tacoma, County of Pierce, State of Washington.

12 **[Segment 4] - Alley between Mullen Street and Ferdinand Street from North
13 36th Street to North 37th Street**

14 Those portions of the Southwest Quarter of the Northwest Quarter of Section 25,
15 Township 21 North, Range 02 East, W.M., described as follows:

16 Lots 1 through 18, Blocks 11 and 12, **Glen's First
17 Addition to Tacoma, W.T.**, according to the plat recorded in Volume 4, Page 2,
18 filed October 12, 1889, records of Pierce County Auditor;

19 EXCEPT the West 80 feet of said Lots 1 and 2, Block 12. All situate in the City of
20 Tacoma, County of Pierce, State of Washington.

21 *Rodriguez Testimony; Ex. C-1, Ex. C-12.*

 6. For purposes of statutory application and process,⁷ LID 8663 is a City initiated (by
resolution) LID. Initial contacts with property owners in the proposed LID were commenced
through a series of noticed community meetings when DPW first began planning to pave North
Whitman Street and North Lexington Street.⁸ The meetings were intended to inform property
owners of the planned paving project(s), and let them know of other options for neighborhood

⁷ See Revised Code of Washington ("RCW") 35.43.120-.150.

⁸ And later North Mullen Street.

1 consideration such as adding curb and gutters to the paving project through LID financing, as
2 referenced above. *Rodriguez Testimony; Ex. C-2*. Meetings for the various segments appear to have
3 been held on the following dates:

- 4 - August 8, 2017 (*Ex. C-5.2, Ex. C-7.1*),
- 5 - September 13, 2017, (*Ex. C-5.1, C-7.1-1, C-7.5*),
- 6 - October 19, 2017 (*Ex. C-5.2-1*),
- 7 - November 21, 2017 (*Ex. C-2.2, Ex. C-2.3*), and
- 8 - May 9, 2018 (*Ex. C-3.1, Ex. C-3.2*).

7 7. Notices of Public Hearing for LID 8663 were mailed on October 23, 2020, to all
8 owners of record within the proposed LID, as such are listed on the Pierce County tax rolls. Notices
9 were sent to both listed mailing addresses (when different than the LID site address) as well as to
10 the actual residence within the proposed LID boundary. The Hearing Resolution was published on
11 October 22 and 23, 2020, in the Tacoma Daily Index. An Affidavit of Publication has been filed
12 with the City Clerk, together with plans and estimates required by applicable laws. *RCW*
13 *35.43.150; Rodriguez Testimony; Ex. C-1, Ex. C-13.1, Ex. C-14*.

14 8. Pursuant to applicable law, and at the direction of the Tacoma City Council, the
15 Hearing Examiner conducted a public hearing on November 9, 2020, to consider formation of LID
16 8663. *RCW 35.43.150, Ex. C-1*.

17 9. DPW's LID Section prepared a staff report which was entered into the record as
18 Exhibit C-1. The staff report indicates that the total estimated project cost is \$2,487,958.60⁹ with an
19 estimated \$650,377.60 being assessed to property owners within the proposed LID, an estimated
20 \$855,255.00 being contributed by the City of Tacoma's Environmental Services Department, and
21

⁹ The total cost set forth here is higher than what was stated in the formation hearing notice and the Hearing Resolution due to certain City staff costs having not been factored in earlier. The LID assessment estimate has not changed, however. *Rodriguez Testimony*.

1 \$952,326.00 coming from Streets Initiative funds. The LID is proposed to have a 20-year
2 Assessment Roll/repayment period, and the estimated cost per Assessable Unit of Frontage (AUF)
3 for the respective segments is as follows:

4	Segment 1	\$150.00
	Segment 2	\$220.00
5	Segment 3	\$247.00
	Segment 4	\$165.00.

6 *Rodriguez Testimony; Ex. C-1.*

7 10. The testimony of Ralph Rodriguez, LID Section Representative for DPW, further
8 established the following:

- 9 A. For purposes of measuring support going in, and for determining
10 percentages of protest now, the LID Section looked at opposition to
formation (remonstrance) by individual segment, not for the LID in total.
- 11 B. DPW discussed options and answered property owner questions both
12 through the meetings referenced above, as well as through individual
phone and email contacts (as well as at the hearing).
- 13 C. Going into the hearing, the LID Section believed that there was no
14 property owner opposition to LID formation in Segments 1 and 2, and
15 that only five property owners in Segment 3, and three property owners
in Segment 4 were opposed. *Rodriguez Testimony, Ex. C-1.*

16 11. The LID Section indicated that a zone and termini and modified zone and termini (for
17 Segment 4) formula were used to estimate the preliminary assessments for each property within the
18 LID. *RCW 35.44. 030 and .040; Rodriguez Testimony; Ex. C-1.*

19 12. At one point during the hearing, attendees in the hearing room totaled 34. During the
20 public comment portion of the hearing, property owners from 13 different properties in the LID
21

1 offered testimony or asked questions of the LID Section staff.¹⁰ Public testimony, both during the
2 hearing and through written submissions after, established that some property owners who were
3 previously considered in favor of forming the LID based on Advisory Survey signatures, had
4 changed their position and now opposed formation. It was also made known that some property
5 owners who had supported the LID had moved and that the new property owners held a different
6 view on formation. A few property owners testified that other property owners not present at the
7 hearing also opposed LID formation. The Examiner rejected these hearsay statements, but allowed
8 for these purported opposing owners to submit written statements to the Office of the Hearing
9 Examiner during the extended submission period. Taking all testimony and written submissions
10 into account, the following property owners (by Segment) oppose formation¹¹ of the LID 8663:

11 **Segment 1**

- 12 - Gallinatti, 4356 N Lexington Street, estimated assessment \$12,990.50
13 - Wiseman, 4327 N Lexington Street, estimated assessment \$14,984.45

14 These two opposing properties represent approximately 13% of the total cost of the
15 improvement for Segment 1. ($\$12,990.50 + \$14,984.45 = \$27,974.95$. $\$27,974.95 \div \$211,324.55 =$
16 approx. 13%).¹²

16 **Segment 2**

17 None

18 **Segment 3**

- 19 Lewandowski, 4732 N Mullen Street, estimated assessment \$11,114.50
20 Webb, 4722 N Mullen Street, estimated assessment \$14,819.50

21 ¹⁰ One additional property owner appeared to want to testify/comment, but was unable to make his audio heard in the Zoom hearing room. The Examiner encouraged him to submit his testimony in writing during the extended submission period from November 9, 2020 to November 13, 2020. Nothing was received, however.

¹¹ The reason for only listing those in opposition is set forth at Conclusions of Law 6~8.

¹² Controlling state case law has determined that, for purposes of applying RCW 35.43.180 to a(n) LID such as this one where the municipality is also contributing to the cost of the project, the percentage of opposition is calculated using only the part of the cost to be assessed against property owners as the "total cost of the improvement." See *Conclusion of Law 6*.

1 Totten, 4718 N Mullen Street, estimated assessment \$14,819.25
2 Nogler, 4712 N Mullen Street, estimated assessment \$14,819.25
3 Ferguson, 4702 N Mullen Street, estimated assessment \$16,671.75
4 Nowasky, et al., 4717 N Mullen Street, estimated assessment \$22,229.00

5 These six opposing properties represent approximately 11.6% of the total cost of the
6 improvement for Segment 3. ($\$11,114.50 + \$14,819.50 + \$14,819.25 + \$14,819.25 + \$16,671.75 +$
7 $\$22,229.00 = \$94,473.25$. $\$94,473.25 \div \$182,771.75 =$ approx. 52%)

8 The LID Section assigns only \$11,114.50 to the protest from 4717 North Mullen Street
9 without citing any authority for its calculation. There are four common owners for this property
10 who became owners through the estate of their mother. Two of the common property owners have
11 protested; two were silent. The LID Section presumably halved the estimated assessment on the
12 property based on only two owners speaking out. There is only one parcel of property, however,
13 and two of its common owners have spoken on behalf of the property in protest. Without the City
14 presenting some authority for subdividing the amount from an unsubdivided parcel, it would seem
15 the entire amount ascribed to the property should be included in the protest. If the other two
16 common owners had spoken out in support of LID formation, more analysis may have been
17 required, and a different result obtained.

11 Segment 4

12 Peairs, 3606 N Mullen Street, estimated assessment \$8,249.65
13 Lawson, 3602 N Mullen Street, estimated assessment \$8,249.65
14 Strayer, 3601 N Ferdinand Street, estimated assessment \$8,249.65

15 These three opposing properties represent approximately 4.7% of the total cost of the
16 improvement for Segment 4. ($\$8,249.65 \times 3 = \$24,748.95$. $\$24,748.95 \div \$144,643.55 =$ approx.
17 17%)

16 Total LID 8663

17 When the LID is not broken into segments, but rather considered as a whole, the overall
18 percentage of protest is 23%. ($\$27,974.95 + \$94,473.25 + \$24,748.95 = \$147,197.15$. $\$147,197.15$
19 $\div \$650,377.60$)

20 *Rodriguez Testimony, written and verbal testimony of all property owners listed above; Ex. C-1,*
21 *Ex. C-15.*

21 13. The LID Section recommends formation of LID 8663 based on what it believed to be

1 insufficient levels of protest. When LID 8663 is taken as one whole unit, the LID Section is correct,
2 with the percentage of protest only rising to 23%. When the segmented approach is taken, as the
3 LID Section has done in all cases to this point, Segments 1, 2 and 4 still fails to achieve sufficient
4 protest, but that is not necessarily the case for Segment 3, as discussed further below.

5 14. The digital audio recording of the hearing in this matter is in the custody of the
6 Hearing Examiner's office, and the file is in the custody of the City Clerk. Both are available for
7 review by the City Council and any party in interest.

8 15. Any Conclusion of Law more properly deemed or considered to be a Finding of Fact
9 is hereby adopted as such.

10 From these Findings of Fact, the Examiner makes the following:

11 **CONCLUSIONS OF LAW**

12 1. The Hearing Examiner has jurisdiction in the matter to conduct a hearing and issue a
13 written recommendation to the City Council under Tacoma Municipal Code ("TMC") 1.23.050.A.2
14 and TMC 10.04.026. *See also RCW 35.42.125 and 35.43.150.*

15 2. Washington LID law provides that every city or town shall have the power to create
16 local improvement districts for paving of public streets and alleys and adding curbing and drainage
17 thereto, and to levy and collect special assessments against the real property specially benefited
18 thereby. *See RCW 35.43.040.* LIDs may be comprised of specific units (segments) of
19 "noncontinuous improvements" as was done here by the LID Section. *RCW 35.43.050.*

20 3. The purposes of the initial LID formation hearing are to determine if formation of the
21 district should proceed and to determine whether the limits of the district are proper. *Chandler v.*

1 *City of Puyallup*, 70 Wash. 632, 633, 127 P. 293(1912). Accordingly, the only issues properly
2 presented during the formation stage of the LID process are:

3 (a) Whether the City has jurisdiction or authority to proceed with creating the
4 district; and

5 (b) Whether the proposed boundaries for the district are proper.

6 *Underground Equality v. Seattle*, 6. Wn. App. 338, 342, 492 P. 2d 1071(1972).

7 4. No party in these proceedings has challenged the City’s authority to create this LID
8 for sewer improvements under the provisions of RCW 35.43, except insofar as the various property
9 owners listed in Finding of Fact (“FoF”) 12 have registered their formal opposition to formation.

10 5. No party to these proceedings has challenged the City’s determination of the proper
11 boundary for proposed LID No. 8663 under the terms of RCW, Chapter 35.43, again except insofar
12 as there is general opposition to formation as recounted in FoF 12.

13 6. The City’s authority to form an LID initiated by resolution is divested if owners of
14 property shouldering a sufficient proportion of the project costs protest formation of the district per
15 the following provision of State LID law:

16 **§ 35.43.180 Restraint by protest.** The jurisdiction of the legislative
17 authority of a city or town to proceed with any local improvement initiated
18 by resolution *shall be divested by a protest filed with the city or town*
19 *council within thirty days from the date of passage of the ordinance*
20 *ordering the improvement, signed by the owners of the property within the*
21 *proposed local improvement district or utility local improvement district*
subject to sixty percent or more of the total cost of the improvement
including federally-owned or other nonassessable property as shown and
determined by the preliminary estimates and assessment roll of the
proposed improvement district or if all or part of the local improvement
district or utility local improvement district lies outside of the city or town,
such jurisdiction shall be divested by a protest filed in the same manner and

1 signed by the owners of property which is within the proposed local
2 improvement district or utility local improvement district but outside the
3 boundaries of the city or town, and which is subject to sixty percent or more
4 of that part of the total cost of the improvement allocable to property within
the proposed local improvement district or utility local improvement district
but outside the boundaries of the city or town, including federally-owned or
other non-assessable property:... [Emphasis added]. *RCW 35.43.180*.

5 The State Supreme Court has determined that, for purposes of RCW 35.43.180, the phrase “the
6 total cost of the improvement” means only the part of the cost to be assessed against property
7 owners, and not the actual total cost of the project. To that end costs taken on by the municipality
8 are not included in calculating the percentage of opposition under RCW 35.43.180.¹³

9 7. The City of Tacoma, has further limited its authority to proceed with formation of an
10 LID in the face of protest by adopting Resolution No. 40673 which expresses the Council’s policy
11 to refrain from forming an LID if property owners representing 50 percent or more of the total
12 assessments file protests to formation of the district. This policy contains an exception allowing
13 formation if the City Council has previously determined the LID to be in the best interest of the
14 City, but this exception has not been invoked here.¹⁴

15 8. The protest to proposed LID 8663, filed or otherwise attested to by the property
16 owners in each segment, is below both the City’s 50 percent limitation and the State’s 60 percent
17 limitation, for Segments 1, 2 and 4, when calculated by segment. If taken as a whole, LID 8663
18 falls below these percentages in total.¹⁵ As segmented by the LID Section, and as calculated above,
19 Segment 3 rises slightly above the protest level set forth in City Resolution No. 40673. Therefore,
20 the City has the authority, by statute and its own LID policies, to proceed with formation of the
21

¹³ *Kasper v. Edmonds*, 69 Wn.2d 799, 420 P.2d 346 (1966), *Thymian v. Massart*, 69 Wn.2d 806, 420 P.2d 351 (1966).

¹⁴ Resolution No. 37956.

¹⁵ *Finding of Fact 12*.

1 district, when taken as a whole, but if instead the City Council chooses to leave things segmented,
2 the Council would reject the inclusion of Segment 3 in accordance with Resolution No. 40673 and
3 RCW 35.43.050, and only form LID 8663 for Segments 1, 2 and 4 (or a, b and d). Under RCW
4 35.43.180, only protesting property owners and their percentage of the total cost of the
5 improvement are accounted for in determining whether the City has been divested of its authority
6 to form a(n) LID.

7 9. There has been no evidence presented indicating that the boundaries of proposed LID
8 No. 8663 are not properly drawn. The LID boundaries appear to embrace, as nearly as practicable,
9 all the real property that will be specially benefitted by the upgraded paving project.¹⁶ The benefits
10 of the project are special to those properties and, accordingly, they have been properly included
11 within the boundaries of proposed LID No. 8663.

12 10. Based upon the foregoing, the Hearing Examiner concludes that proposed LID No.
13 8663 meets the requirements of State law and the City's code and policies governing LID formation
14 when the LID is taken as a whole unit rather than being segmented, thereby authorizing the LID to
15 be formed, and the Examiner has no problem recommending the same. The problem lies in the fact
16 that the LID Section did segment the LID into four parts and made its calculations and estimates on
17 that basis. Under the circumstances then, the City Council should recognize that Segment 3 has
18 reached a 52% protest and a majority of the properties make up that 52% (6 out of 11).

19 11. Any Finding of Fact stated herein above which may be more properly deemed or
20 considered to be a Conclusion of Law is hereby adopted as such.
21

¹⁶ See RCW 35.43.080.

1 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner
2 enters the following recommendation:

3 **RECOMMENDATION**

4 Based upon applicable Tacoma City Council policies and controlling State and local law
5 with respect to formation of local improvement districts for street improvements the Hearing
6 Examiner recommends the City Council approve the formation of proposed Local Improvement
7 District No. 8663 as to Segments 1, 2 and 4, and that the properties comprising Segment 3 be
8 excluded from the formation.

9 **DATED** this 2nd day of December, 2020.

10 
11

 JEFF H. CAPELL, Hearing Examiner

1 **NOTICE**

2 **RECONSIDERATION/APEAL OF EXAMINER'S RECOMMENDATION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise
5 provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of
6 a decision or recommendation entered by the Hearing Examiner. A motion for reconsideration must be in
7 writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of
8 the Hearing Examiner within 14 calendar days of the issuance of the Hearing Examiner's
9 decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last
10 day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing
11 shall be the next working day. The requirements set forth herein regarding the time limits for filing of
12 motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
13 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the
14 alleged errors shall be dismissed by the Hearing Examiner. It shall be within the sole discretion of the
15 Examiner to determine whether an opportunity shall be given to other parties for response to a motion for
16 reconsideration. The Hearing Examiner, after a review of the matter, shall take such further action as
17 he/she deems appropriate, which may include the issuance of a revised decision/recommendation.
18 (*Tacoma Municipal Code 1.23.140*).

19 **APEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

20 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or
21 entity having standing under the ordinance governing such application and feeling that the
22 recommendation of the Hearing Examiner is based on errors of procedure, fact or law may have the right
23 to appeal the recommendation of the Hearing Examiner by filing written notice of appeal and filing fee
24 with the City Clerk, stating the reasons the Hearing Examiner's recommendation was in error.

25 **APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN
26 ACCORDANCE WITH TMC 1.70.**

27 **GENERAL PROCEDURES FOR APPEAL:**

28 The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all
29 of these procedures here, you should be aware of the following items which are essential to your appeal.
30 Any answers to questions on the proper procedure for appeal may be found in the City Code sections
31 heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the verbatim recording. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.