



City of Tacoma  
Hearing Examiner

March 14, 2014

TO THE INTERESTED PARTIES

*(See Attached Transmittal List)*

Re: HEX 2014-003 – Proposed Local Improvement District No. 8660 - Formation

Enclosed please find the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered in the matter on March 14, 2014, as the result of a public hearing held on March 10, 2014.

Sincerely,

Louisa Legg  
Legal Assistant

Enclosure (1) – Findings/Conclusions/Recommendation  
Attachment (1) – Transmittal List

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED March 14, 2014, at Tacoma, WA.

Louisa Legg

**Proposed L.I.D. No. 8660 – Formation**  
**Hearing Examiner Recommendation Transmittal List**

Via Inter-office Mail:

Ralph Rodriguez, L.I.D. Administrator, City of Tacoma, Dept. of Public Works  
Ricardo Noguera, Director, Community and Economic Development, City of Tacoma  
Carey Jenkins, Housing Division Manager, Community and Economic Development, City of Tacoma  
Liz Wheeler, Customer Service Rep. Tech., Finance Dept., Treasurer's Office, City of Tacoma  
Gary Gates, Operations Manager, Tacoma Public Utilities, Water Division  
Ryan Flynn, P. E., Sr. Principal Engineer, Tacoma Public Utilities, Water Distribution Engineering  
Teresa Dressler, P.E., Environmental Services, Science and Engineering Division, City of Tacoma  
Chris Larson, P.E., Public Works Engineering, City of Tacoma  
Tacoma City Clerk's Office  
Pierce County Auditor's Office

Via First Class Mail:

Bruce E. Allen, 5047 North Bristol Street, Tacoma, WA 98407-2125  
Donald B. Bickford, 5044 North Bristol Street, Tacoma, WA 98407-2126  
Elvine E. Carman, 5021 North Bristol Street, Tacoma, WA 98407-2125  
Mary E. "Liz" Chaffee, 3005 North Mason Avenue, Tacoma, WA 98407-5409  
Douglas and Susan Critchlow, 5002 North Bristol Street, Tacoma, WA 98407  
Robert J. & Sharon Dahmen, 5001 North Bristol Street, Tacoma, WA 98407-2125  
Fred Hall, 4017 North 14<sup>th</sup> Street, Tacoma, WA 98406  
Michael P. R. and Alessandra Heiserman, 5020 North Bristol Street, Tacoma, WA 98407-2126  
Nanci L. Holman-Smith, 5026 North Bristol Street, Tacoma, WA 98407-2126  
James P. and Becky J. Hunt, 5017 North Bristol Street, Tacoma, WA 98407-2125  
Judith A. Jones, 5016 North Bristol Street, Tacoma, WA 98407-2126  
Thomas L. Jordin, 5025 North Bristol Street, Tacoma, WA 98407-2125  
John G. Orr, 4105 N 30<sup>th</sup> Street, Tacoma, WA 98407-5313  
Linda M. Robson, 5022 North Bristol Street, Tacoma, WA 98407-2126  
Marcia N. Stulgis, 4124 North 31<sup>st</sup> Street, Tacoma, WA 98407-5405  
Lamar and Jean A. Teat, 5043 North Bristol Street, Tacoma, WA 98407-2125

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **Formation of**  
5 **Local Improvement District No. 8660**

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**AND RECOMMENDATION**

6  
7  
8 **A PUBLIC HEARING** on the above-captioned matter was held on March 10, 2014,  
9 before PHYLLIS K. MACLEOD, the Hearing Examiner (Examiner) for the City of Tacoma.  
10 The Examiner having considered the testimony and evidence presented, having reviewed the  
11 file, and being otherwise fully advised, makes the following:

12 **FINDINGS OF FACT:**

13 1. The Tacoma City Council adopted Resolution No. 38848 on February 18, 2014,  
14 expressing the Council's intent to order the local improvements described below and to pay the  
15 cost of such improvements by imposing and collecting special assessments upon the real  
16 property that would receive special benefit from those improvements. The improvements  
17 consist of construction as follows:

18 **Segment 1:** Construction of permanent street pavement, with  
19 structural section, curbs, gutters and storm drainage on Bristol Street  
20 from North 50<sup>th</sup> Street to North 51<sup>st</sup> Street.

21 **FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**AND RECOMMENDATION**

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1           **Segment 2:** Construction of permanent alley pavement, with a  
2           structural section and storm drainage, on the alley between North 30<sup>th</sup>  
3           Street and North 31<sup>st</sup> Street from Monroe Street to Mason Avenue.

4           Such improvements would include all other work necessary to complete the same in  
5           accordance with the plans and specifications to be prepared by the Tacoma City Engineer.

6           Resolution No. 38848 (proposed Local Improvement District [L.I.D.] No. 8660) is incorporated  
7           herein by reference as though fully set forth. *Ex. 6.*

8           2.       Resolution No. 38848 set the date of March 10, 2014, for the Hearing Examiner to  
9           conduct a public hearing to consider construction of the identified improvements and to consider  
10          formation of L.I.D. No. 8660 in order to provide long-term financing for the improvements.

11          Notice of Public Hearing for proposed L.I.D. No. 8660 was published in the Tacoma Daily  
12          Index on February 20 and 21, 2014. *Ex. 1; Ex. 7; Rodriguez Testimony.* Notice of Public  
13          Hearing letters were mailed to property owners of record on February 21, 2014. *Ex. 1; Ex. 8;*  
14          *Rodriguez Testimony.* An Affidavit of Publication has been filed with the City Clerk, as well as  
15          plans and estimates required by said resolution.

16          3.       Pursuant to applicable law and the direction of the Tacoma City Council, the  
17          Hearing Examiner convened a public hearing on March 10, 2014, to consider the formation of  
18          L.I.D. No. 8660. The hearing was conducted in the First Floor Council Chambers, Tacoma  
19          Municipal Building, 747 Market Street, and was open to the public.

20          4.       The Department of Public Works (DPW), L.I.D. Section prepared a staff report  
21          regarding the project which was entered into the record as *Exhibit 1.* The DPW's report

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

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1 Services would replace the street with a surface similar to the existing roadway. Some of the  
2 neighbors in the area hoped to upgrade the roadway to a full street section with concrete curbs  
3 and gutters. A neighborhood advisory survey for such an improvement was circulated in 2013  
4 and signed by the owners of 54.45 percent of the property within the proposed improvement  
5 district. *Ex. 3; Ex. 5; Rodriguez Testimony.*

6 8. Prior to the hearing, Segment 1 property owners Nanci Holman (Smith) (*Ex. 12*)  
7 and Susan Critchlow (*Ex. 13*) filed written protests against formation of the district. A number  
8 of additional property owners within the district appeared at the hearing and lodged their  
9 protest against formation of Segment 1, including Linda M. Robson, Elvine E. Carman,  
10 Michael Heiserman, Donald B. Bickford, Robert J. Dahmen, and Judith A. Jones. *Exs. 20-25,*  
11 *respectively.* At the conclusion of the hearing, the protest rate had increased to 53.12 percent.  
12 *Ex. 26.* Based upon that remonstrance rate, the DPW is recommending against formation of  
13 Segment 1 of proposed L.I.D. No. 8660. *Id.*

### 14 Segment 2

15 9. The Segment 2 improvements would encompass construction of alley pavement  
16 with a structural section and storm drainage on the alley between North 30<sup>th</sup> Street and North  
17 31<sup>st</sup> Street from Monroe Street to Mason Avenue. The existing alley is a 12-foot oil mat  
18 surface in very poor repair. It would be replaced with a paved surface 16 feet in width. Mr.  
19 Rodriguez testified that the zone and termini method was used to estimate the preliminary  
20

21 **FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

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1 assessments for each property within Segment 2 of the proposed L.I.D. (RCW 35.44.030 and  
2 .040). *Rodriguez Testimony*.

3 10. A neighborhood advisory survey was circulated in or around 2012 and signed by  
4 the owners of 50.78 percent of the property within the improvement district. *Ex. 4; Ex. 5*.  
5 Prior to the hearing, the DPW received inquiry from property owner Marcia Stulgis who was  
6 seeking information about the L.I. D. Assistance Program. She did not register a protest to the  
7 project. *Ex. 15; Rodriguez Testimony*. Property owner Mary Liz Chaffee appeared at the  
8 hearing with questions about the project, but she did not protest formation of the district.  
9 *Chaffee Testimony*. At the conclusion of the hearing, the remonstrance rate for Segment 2 of  
10 proposed L.I.D. No. 8660 was zero percent.

11 11. The verbatim digital transcript in the referred-to matter is in the custody of the  
12 Examiner's Office, the file is in the custody of the City Clerk, and both are available for review  
13 by the Council and any party in interest.

14 12. Any Conclusion of Law hereinafter stated which may be deemed to be a Finding  
15 of Fact herein is hereby adopted as such.

16 13. From these Findings of Fact the Examiner makes the following:

17 **CONCLUSIONS OF LAW:**

18 1. The Hearing Examiner has jurisdiction in this matter pursuant to *Tacoma*  
19 *Municipal Code (TMC) 1.23.050.A.2*.

20  
21 **FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

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1           2.     The purposes of the initial hearing in regard to formation of an L.I.D. are to  
2 determine if the formation of the district should proceed and if the limits of the district are  
3 proper. *Chandler v. City of Puyallup*, 70 Wash. 632, 633, 127 P.293 (1912). Accordingly, the  
4 only issues properly presented during the formation stage of the L.I.D. process are:

5           (a) The jurisdiction or authority of the city to proceed with creating the district.

6           (b) The proper boundaries of the district.

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

8           3.     No party to these proceedings has challenged the City's authority to create L.I.D.  
9 No. 8660 under the terms of RCW, Chapter 35.43.<sup>1</sup>

10           4.     The City's authority to create an L.I.D. initiated by resolution, as is the case here,  
11 is limited if owners of property shouldering a sufficient proportion of the project costs protest  
12 formation of the district:

13                   **35.43.180 Restraint by protest.** The jurisdiction of the  
14 legislative authority of a city or town to proceed with any local

15 <sup>1</sup> RCW 35.43.040 provides, in pertinent part, that:

16 Whenever the public interest or convenience may require, the legislative authority of any city or town may order  
17 the whole or any part of any local improvement including but not restricted to those, or any combination thereof,  
18 listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to  
19 the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery  
20 thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special  
assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares,  
public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing,  
graveling, regravelling, piling, repiling, capping, recapping, or other improvement; if the management and  
control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and  
specifications for their improvement must be approved by the board of park commissioners before their  
adoption; . . .

21 **FINDINGS OF FACT,  
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1 improvement initiated by resolution *shall be divested by a protest*  
2 *filed with the city or town council within thirty days from the*  
3 *date of passage of the ordinance ordering the improvement,*  
4 *signed by the owners of the property within the proposed local*  
5 *improvement district or utility local improvement district subject*  
6 *to sixty percent or more of the total cost of the improvement*  
7 including federally-owned or other non-assessable property as  
8 shown and determined by the preliminary estimates and  
9 assessment roll of the proposed improvement district or, if all or  
10 part of the local improvement district or utility local  
11 improvement district lies outside of the city or town, such  
12 jurisdiction shall be divested by a protest filed in the same  
13 manner and signed by the owners of property which is within the  
14 proposed local improvement district or utility local improvement  
15 district but outside the boundaries of the city or town, and which  
16 is subject to sixty percent or more of that part of the total cost of  
17 the improvement allocable to property within the proposed local  
18 improvement district or utility local improvement district but  
19 outside the boundaries of the city or town, including federally-  
20 owned or other non-assessable property: . . . (Emphasis added.)

21 *RCW 35.43.180.*

5. The City of Tacoma, however, has further limited its authority to proceed with formation of an L.I.D. in the face of protest by adopting Resolution No. 37956, which expresses the Council's policy to refrain from forming an L.I.D. if property owners representing 50 percent or more of the total assessments protest formation of the district. This policy contains an exception allowing formation if the City Council has previously determined the L.I.D. to be in the best interest of the City.

**FINDINGS OF FACT,  
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1           6.     Since the rate of protest against formation of Segment 1 of proposed L.I.D. No.  
2 8660 rose above 50 percent<sup>2</sup>, the City's policies do not support formation of Segment 1 of the  
3 proposed district. Segment 2 of proposed L.I.D. No. 8660 has not been protested by any of the  
4 property owners within its boundaries, therefore, the City has the authority by statute and its  
5 own L.I.D. policies to proceed with the formation of the Segment 2 of proposed L.I.D. No.  
6 8660.

7           7.     Robert Dahmen, a property owner in Segment 1, presented evidence that his  
8 property already has curb, gutter and sidewalk improvements and that it would not benefit from  
9 the proposed L.I.D. *Ex. 18*. It is not necessary to reach a conclusion regarding the benefit, if  
10 any, to Mr. Dahmen's property because Segment 1 of the proposed L.I.D. does not meet the  
11 protest rate criterion for formation. In all other respects, the proposed L.I.D. boundaries appear  
12 to embrace as nearly as practicable all property that will be specially benefited by proposed  
13 L.I.D. No. 8660. The boundaries of Segments 1 and 2 of the proposed L.I.D. include only  
14 those properties that will have access to the alley/street improvements. The benefits of the  
15 project are special to those properties and, accordingly, they have been properly included  
16 within the boundaries of proposed L.I.D. No. 8660.

17           8.     Based on the foregoing, the Hearing Examiner concludes that Segment 1 of  
18 proposed L.I.D. No. 8660 does not meet the City's policies governing improvement district

19  
20 <sup>2</sup> By the conclusion of the hearing, protest rates for the project were: (1) Segment 1 – 53.12 percent; (2)  
Segment 2 – zero percent (*Ex. 26*).

21 **FINDINGS OF FACT,  
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1 formation and should not be formed. Segment 2 of proposed L.I.D. No. 8660 meets the  
2 requirements of state law and the City's policies governing improvement district formation and  
3 should be formed.

4 9. Any Finding of Fact hereinbefore stated which may be deemed to be a Conclusion  
5 of Law herein is hereby adopted as such.

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

8 **RECOMMENDATION:**

9 Based on applicable Tacoma City Council policies and state law with respect to  
10 formation of local improvement districts, the Hearing Examiner recommends the City Council  
11 refrain from forming Segment 1 of proposed Local Improvement District No. 8660. Based  
12 upon the same authorities, the Hearing Examiner further recommends the City Council should  
13 form Segment 2 of proposed Local Improvement District No. 8660

14 **DATED** this 14<sup>th</sup> day of March, 2014.

15   
16 **PHYLLIS K. MACLEOD, Hearing Examiner**

21 **FINDINGS OF FACT,  
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1 **NOTICE**

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

3 **RECONSIDERATION:**

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

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

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

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

**GENERAL PROCEDURES FOR APPEAL:**

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing  
all of these procedures here, you should be aware of the following items which are essential to your  
appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code  
sections 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 tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

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